SHEARMAN & STERLING LLP
Antitrust Unpacked
ANTITRUST LAW BLOG

October 15, 2016

Antitrust Reverse Termination Fees

(covering January 1, 2005, through September 30, 2016)

Announcement Date	Acquiror	Target	Status	Equity Value ($M)	Antitrust Reverse Breakup Fee Amount ($M)	% of Equity Value	Enforcement Action US	EC	Merger Agreement
9/8/2016	Google	Apigee	Pending	$530.08	$46.60	8.8%	-	-	Link
8/16/2016	Cintas	G&K Services	Pending	$1,918.94	$100	5.2%	-	-	Link
7/26/2016	Analog Devices	Linear Technology	Pending	$14,390.72	$490	3.4%	-	-	Link
7/21/2016	Komatsu	Joy Global	Pending	$2,777.62	$150	5.4%	-	-	Link
5/31/2016	GreenPlains Energy	Westar Energy	Pending	$8,501.20	$380	4.5%	-	-	Link
4/28/2016	Comcast Corp.	Dreamworks Animation	Completed	$3,800.00	$200	5.3%	None	None	Link
3/16/2016	Coherent	Rofin-Sinar Technologies	Pending	$919.84	$65	7.1%	-	-	Link
3/4/2016	AMC Entertainment	Carmike Cinemas	Pending	$736.46	$50	6.8%	-	-	Link
3/2/2016	CCL Industries	Checkpoint Systems	Completed	$421.16	$13	3.1%	None	None	Link
2/9/2016	Tianjin Tianhai Inv.	Ingram Micro	Pending	$5,771.81	$400	6.9%	-	-	Link
2/9/2016	Algonquin Power	Empire District Electric	Pending	$1,487.95	$65	4.4%	-	-	Link
2/4/2016	Suzhou Dongshan	Multi-fineline Electronix	Completed	$589.39	$27	4.7%	None	None	Link
2/1/2016	Dominion Resources	Questar	Completed	$4,374.71	$154	3.5%	None	None	Link
1/13/2016	Microchip Technology	Atmel	Completed	$3,433.68	$250	7.3%	None	None	Link
11/18/2015	ON Semiconductor	Fairchild Semiconductor	Completed	$2,268.02	$180	7.9%	Consent decree	--	Link
11/17/2015	Air Liquide S.A.	Airgas	Completed	$10,305.92	$400	3.9%	Consent decree	None	Link
11/2/2015	Shire PLC	Dyax	Completed	$6,076.39	$280	4.6%	None	None	Link
10/28/2015	Snyder's Lance	Diamond Foods	Completed	$1,275.97	$50	3.9%	None	None	Link
10/27/2015	Walgreens Boots Alliance	Rite Aid	Pending	$9,416.39	$325	3.5%	--	--	Link
10/26/2015	Duke Energy	Piedmont Natural Gas	Completed	$4,761.29	$250	5.3%	None	None	Link
10/21/2015	Western Digital Corp.	SanDisk	Completed	$17,139.75	$1,060.42	6.2%	None	None	Link
10/13/2015	Svenska Cellulosa	Wausau Paper	Completed	$513.34	$26	5.1%	None	None	Link
9/4/2015	Emera (1)	TECO Energy	Completed	$6,481.18	$326.90	5.0%	None	None	Link
7/26/2015	Teva Pharmaceutical	Allergan	Completed	$40,500.00	$1,000.00	2.5%	Consent decree	--	Link
7/3/2015	Aetna	Humana	Pending	$34,088.24	$1,000.00	2.9%	In litigation	--	Link
7/2/2015	Centene	Health Net	Completed	$6,072.36	$250.00	4.1%	None	None	Link
6/20/2015	Anthem	Cigna	Pending	$47,215.57	$1,850.00	3.9%	In litigation	--	Link
6/1/2015	Intel	Altera	Completed	$16,327.08	$500.00	3.1%	None	None	Link
2/19/2015	Ball (os) (2)	Rexam	Completed	$8,400.00	$466.17	5.5%	Consent decree	Conditions	Link
2/12/2015	Expedia	Orbitz Worldwide	Completed	$1,329.58	$115.00	8.6%	None	None	Link
2/4/2015	Staples	Office Depot	Blocked	$6,205.61	$250.00	4.0%	FTC injunction	--	Link
11/17/2014	Halliburton	Baker Hughes	Abandoned	$34,600.00	$3,500.00	10.1%	DOJ complaint	--	Link

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11/17/2014	Actavis	Allergan	Completed	$67,365.83	$2,100.00	3.1%	None	None	Link
11/3/2014	Laboratory Corp. of Am.	Covance	Completed	$5,960.57	$305.00	5.1%	None	None	Link
9/22/2014	Merck KGaA	Sigma-Aldrich	Completed	$16,673.44	$934.38	5.6%	None	None	Link
9/21/2014	Siemens Aktiengesellschaft	Dresser-Rand Group	Completed	$6,359.15	$400.00	6.3%	None	None	Link
9/4/2014	Mattress Firm Holding Corp.	The Sleep Train	Completed	$440.00	$10.00	2.3%	None	None	Link
8/20/2014	Infineon Technologies	International Rectifier	Completed	$2,865.56	$70.00	2.4%	None	None	Link
8/1/2014	Scientific Games	Bally Technologies	Completed	$3,194.97	$105.00	3.3%	None	None	Link
7/28/2014	Zillow	Trulia	Completed	$2,631.48	$150.00	5.7%	None	None	Link
4/30/2014	Exelon	Pepco Holdings	Completed	$6,826.59	$180.00	2.6%	None	--	Link
3/2/2014	Media General	LIN Media	Completed	$1,541.14	$55.10	3.6%	Consent degree	None	Link
2/20/2014	Brookdale Senior Living	Emeritus	Completed	$1,380.13	$143.00	10.4%	None	None	Link
2/19/2014	Signet Jewelers Limited	Zale	Completed	$689.82	$53.40	7.7%	None	None	Link
1/28/2014	Martin Marietta Materials	Texas Industries	Completed	$2,059.29	$140.00	6.8%	Consent degree	None	Link
12/8/2013	Sysco (3)	US Foods (p)	Blocked	$3,500.00	$300.00	8.6%	FTC injunction	--	Link
8/27/2013	Akorn	Hi-Tech Pharmacal	Completed	$591.35	$48.04	8.1%	Consent agreement	None	Link
7/24/2013	Hanesbrands	Maidenform Brands	Completed	$547.21	$30.00	5.5%	None	None	Link
7/9/2013	The Kroger Co.	Harris Teeter Supermarkets,	Completed	$2,442.52	$200.00	8.2%	None	None	Link
5/29/2013	Service Corp. Int'l	Stewart Enterprises	Completed	$1,131.40	$75.00	6.6%	Consent decree	None	Link
1/31/2013	Scientific Games	WMS Industries	Completed	$1,419.16	$80.00	5.6%	None	None	Link
1/29/2013	Kinder Morgan Energy	Copano Energy	Completed	$3,229.92	$75.00	2.3%	None	None	Link
12/20/2012	IntercontinentalExchange	NYSE Euronext	Completed	$8,048.16	$750.00	9.3%	None	None	Link
12/18/2012	Nielsen Holdings N.V.	Arbitron	Completed	$1,255.77	$131.00	10.4%	Consent decree	None	Link
12/10/2012	Honeywell International Inc.	Intermec	Completed	$603.45	$24.00	4.0%	Consent decree	None	Link
10/25/2012	McKesson Corp.	PSS World Medical	Completed	$1,458.12	$50.00	3.4%	None	None	Link
10/11/2012	Ecolab	Permian Mud Service (p)	Completed	$2,160.00	$100.00	4.6%	Consent degree	None	Link
8/20/2012	Aetna	Coventry Health Care	Completed	$5,632.57	$450.00	8.0%	None	None	Link
7/23/2012	DigitalGlobe	GeoEye	Completed	$466.56	$20.00	4.3%	None	None	Link
7/9/2012	Thomson Reuters Corp.	FX Alliance	Completed	$622.94	$14.50	2.3%	None	None	Link
11/30/2011	Synopsys	Magma Design Automation	Completed	$505.04	$30.00	5.9%	None	None	Link
9/6/2011	International Paper	Temple-Inland	Completed	$4,300.00	$200.00	4.7%	Consent decree	None	Link

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8/15/2011	Google	Motorola Mobility	Completed	$11,877.58	$2,500.00	21.0%	None	None	Link
6/13/2011	Honeywell International	EMS Technologies	Completed	$509.86	$19.60	3.8%	None	None	Link
5/4/2011	Applied Materials	Varian Semiconductor	Completed	$4,751.16	$200.00	4.2%	None	None	Link
4/27/2011	CoStar Group	LoopNet	Completed	$607.11	$51.60	8.5%	Consent decree	None	Link
4/4/2011	Texas Instruments	National Semiconductor	Completed	$6,119.47	$350.00	5.7%	None	None	Link
3/20/2011	AT&T (4)	T-Mobile USA	Failed	$39,000.00	$4,200.00	10.8%	DOJ complaint	-	Link
11/18/2010	Cardinal Health	Kinray	Completed	$1,300.00	$65.00	5.0%	None	None	Link
10/28/2010	Carlyle Group	Syniverse Holdings	Completed	$2,171.43	$60.00	2.8%	None	None	Link
9/29/2010	VeriFone Systems (5)	Hypercom	Completed	$405.63	$28.40	7.0%	Consent degree	None	Link
9/27/2010	Unilever NV	Alberto-Culver	Completed	$3,699.48	$125.00	3.4%	Consent decree	None	Link
9/19/2010	Safran	L-1 Identity Solutions	Completed	$1,118.00	$75.00	6.7%	None	None	Link
6/14/2010	Cablevision Systems	Bresnan Broadband	Completed	$1,365.00	$50.00	3.7%	None	None	Link
6/7/2010	Grifols	Talecris Biotherapeutics	Completed	$3,604.16	$375.00	10.4%	Consent decree	None	Link
4/26/2010	Hertz	Dollar Thrifty	Completed (6)	$1,429.85	$44.60	3.1%	Consent decree	-	Link
3/2/2010	CF Industries	Terra Industries	Completed	$4,744.86	$123.00	2.6%	None	None	Link
2/23/2010	R.R. Donnelley & Sons	Bowne & Co.	Completed	$460.97	$20.00	4.3%	None	None	Link
2/21/2010	Schlumberger	Smith International	Completed	$9,765.99	$615.00	6.3%	None	None	Link
9/16/2008	Getinge AB	Datascope	Completed	$843.31	$30.00	3.6%	Consent decree	None	Link
8/22/2008	King Pharmaceuticals	Alpharma	Completed	$1,549.65	$60.00	3.9%	Consent decree	None	Link
7/10/2008	Dow Chemical	Rohm and Haas	Completed	$15,051.00	$750.00	5.0%	Consent decree	None	Link
6/5/2008	Verizon Wireless	Alltel Corp	Completed	$28,100.00	$500.00	1.8%	Consent decree	None	Link
4/28/2008	Mars	Wm. Wrigley	Completed	$21,917.51	$1,000.00	4.6%	None	None	Link
11/19/2007	Gerdau	Quanex	Completed	$1,457.73	$60.00	4.1%	None	None	Link
11/18/2007	Celgene	Pharmion	Completed	$2,682.02	$70.00	2.6%	None	None	Link
10/12/2007	Oracle	BEA Systems	Completed	$8,056.00	$500.00	6.2%	None	None	Link
8/15/2007	Thomas & Betts Corporation	The Lamson & Sessions Co.	Completed	$427.93	$4.00	0.9%	None	None	Link
7/17/2007	LKQ	Keystone Automotive	Completed	$795.15	$30.00	3.8%	None	None	Link
7/10/2007	Gerdau Ameristeel	Chaparral Steel	Completed	$4,138.33	$225.00	5.4%	None	None	Link
7/3/2007	Hexion	Huntsman	Failed (7)	$6,239.31	$325.00	5.2%	Consent decree	Conditions	Link
6/20/2007	Luxottica Group SpA	Oakley	Completed	$2,087.00	$69.00	3.3%	None	None	Link
5/28/2007	URS	Washington Group Intl	Completed	$3,102.00	$70.00	2.3%	None	None	Link

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5/18/2007	Microsoft	aQuantive	Completed	$5,265.00	$500.00	9.5%	None	None	Link
5/17/2007	CapitalSource	TierOne	Failed (8)	$618.88	$0.70	0.1%	None	None	Link
3/22/2007	Avery Dennison	Paxar	Completed	$1,265.81	$50.00	4.0%	None	None	Link
3/12/2007	UnitedHealth Group	Sierra Health Services	Completed	$2,425.34	$25.00	1.0%	Consent decree	None	Link
3/5/2007	A&P	Pathmark Stores	Completed	$679.00	$75.00	11.0%	Consent decree	None	Link
2/12/2007	Tenaris	Hydril Co LP	Completed	$2,212.00	$77.00	3.5%	None	None	Link
12/20/2006	M & F Worldwide	John H. Harland	Completed	$1,347.62	$52.50	3.9%	None	None	Link
11/8/2006	Northrop Grumman	Essex	Completed	$521.00	$1.00	0.2%	None	None	Link
10/31/2006	R.R. Donnelley & Sons	Banta	Completed	$894.40	$17.10	1.9%	None	None	Link
10/31/2006	CB Richard Ellis Group	Trammell Crow	Completed	$1,785.67	$100.00	5.6%	None	None	Link
9/18/2006	Smithfield Foods	Premium Standard Farms	Completed	$673.52	$100.00	14.8%	None	None	Link
8/15/2006	Monsanto	Delta and Pine	Completed	$1,507.00	$600.00	39.8%	Consent decree	None	Link
8/8/2006	Brocade Commun'cs	McDATA	Completed	$732.00	$60.00	8.2%	None	None	Link
4/3/2006	Service Corporation Int'l	Alderwoods Group	Completed	$809.38	$25.00	3.1%	Consent decree	None	Link
2/2/2006	Emerson Electric Co.	Artesyn Technologies	Completed	$438.53	$15.00	3.4%	None	None	Link
12/21/2005	Seagate	Maxtor	Completed	$1,900.00	$300.00	15.8%	None	None	Link
12/14/2005	General Dynamics	Anteon International	Completed	$2,063.73	$42.50	2.1%	None	None	Link
12/5/2005	Boston Scientific	Guidant	Completed	$26,544.00	$800.00	3.0%	Consent decree	Conditions	Link
10/24/2005	Sovereign Bancorp	Independence Cmnty Bank	Completed	$3,657.00	$100.00	2.7%	None	None	Link
8/29/2005	Intelsat	PanAmSat Holding	Completed	$3,064.73	$250.00	8.2%	None	None	Link
8/11/2005	QUALCOMM	Flarion Technologies	Completed	$805.00	$50.00	6.2%	None	None	Link
8/2/2005	Adidas-Salomon	Reebok International	Completed	$4,219.87	$75.00	1.8%	None	None	Link
7/17/2005	Whirlpool	Maytag	Completed	$1,674.00	$120.00	7.2%	None	None	Link
3/21/2005	Medicis Pharmaceutical	Inamed Corp	Failed (9)	$2,769.00	$10.00	0.4%	None	None	Link
3/9/2005	Gardner Denver	Thomas Industries	Completed	$714.18	$5.00	0.7%	None	None	Link
2/28/2005	Federated Department Stores	May Department Stores	Completed	$10,406.04	$350.00	3.4%	Assurance agreement with Attorneys General of New York, California,	None	Link

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Notes

p Indicates a private company.

os Out of sample. Does not meet the sample criteria, but is included because it is a transaction of special interest and the requisite information is available.

1 Includes a specific antitrust risk-shifting provision, but the fee is also payable if the financing condition is not satisfied.

2 Out of sample because the target company is not a U.S. corporation. Tender offer pursuant to a Cooperation Agreement governed by English law. All valuations were converted from Pounds Sterling to U.S. Dollars based on the exchange rate as of the announcement of the transaction on February 19, 2015.

3 Under the merger agreement, Sysco will pay a purchase price consisting of $500 million in cash and approximately 89.1 million shares of Sysco's common stock. Newspaper reports value this consideration at $3.5 billion.

4 The antitrust reverse termination fee provision required AT&T to pay Deutsche Telekom (the parent of T-Mobile) $3 billion in cash, enter into a roaming agreement with Deutsche Telekom on terms favorable to both parties, and transfer to Deutsche Telekom certain wireless AWS spectrum that AT&T does not need for its initial LTE roll-out. Press reports typically valued the noncash portion of the fee to T-Mobile at $3 billion, for a total of $6 billion. However, the total outlay to AT&T appears to be $4.2 billion, the number AT&T reported in its Form 8-K on January 26, 2012.

5 In the event that Verifone (the acquirer) elects to extend the drop-dead date because the antitrust conditions have not been satisfied, the antitrust reverse breakup fee increases to $30.4 million (7.5% of the transaction value).

6 After Hertz and Dollar Thrifty signed their merger agreement in April 2010 but before shareholder approval, Avis announced that it was interested in buying Dollar Thrifty. A bidding war of sorts ensured, and in September 2010 the Dollar Thrifty shareholders rejected the Hertz merger agreement to allow the bidding war to continue. In September 2011, Avis withdrew from the bidding. In October 2011, Dollar Thrifty rejected Hertz's pending exchange offer on the grounds that it did not eliminate the antitrust regulatory risk and announced that it was no longer soliciting definitive agreements for a business combination.

7 Although MergerMetrics classified Hexion as a "financial buyer", there was significant horizontal overlap between the target and a Hexion portfolio company that raised antitrust concerns.

8 There was no failure of the antitrust conditions and CapitalSource paid no antitrust reverse breakup fee. The parties did not receive a required approval from the Office of Thrift Supervision by the drop-dead date and TierOne terminated the merger agreement. The antitrust reverse breakup fee provided for the reimbursement of transactions expenses capped at $700,000.

9 There was no failure of the antitrust conditions and Medicis paid no antitrust reverse breakup fee. When higher, competing bids for Inamed were made, Medicis declined to increase the purchase price it would pay. Medicis received a $90 million breakup fee when Inamed accepted a higher bid.

Methodology The FactSet Mergers database, also known as MergerMetrics, collects information on transactions with the following characteristics: (1) the target company must be incorporated in the U.S.; (2) the target company must be publicly traded; and (3) the acquirer must own less than 50% of the target at the time the deal is announced and must be seeking to acquire 100% of the target's equity.

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Within this database, we identified transactions announced between January 1, 2005, and June 30, 2016, in which the merger agreement was publicly filed and had a transaction value of $400 million or greater. We then excluded transactions classified by MergerMetrics as (i) a tender offer; (ii) a short-form merger; (iii) a management buyout; (iv) a leveraged buyout; (v) a going private transaction; (vi) a special purpose acquisition company acquirer; (vii) a financial buyer (unless the transaction was obviously strategic); or (viii) a club deal. There were 740 transactions that met these criteria. Of these, 247 contained reverse breakup fees of any sort, including 72 with specific antitrust triggers.

Some transactions are included in the database that do not satisfy the above criteria because they are are special interest. These transactions are denoted by "(os)" beside the name of the acquiror.