

January 30, 2009

## FTC Issues Increased Hart-Scott-Rodino Thresholds; Fines for HSR Violations Raised

### Hart-Scott-Rodino (HSR) Thresholds

Each year the Federal Trade Commission (FTC) adjusts the reporting thresholds for the HSR premerger notification rules to reflect the previous year's gross national product. Effective February 12, 2009, the following HSR thresholds will go into effect:

| Original Threshold | 2009 Threshold    |
|--------------------|-------------------|
| \$10 million       | \$13.0 million    |
| \$50 million       | \$65.2 million    |
| \$100 million      | \$130.3 million   |
| \$110 million      | \$143.4 million   |
| \$200 million      | \$260.7 million   |
| \$500 million      | \$651.7 million   |
| \$1 billion        | \$1,303.4 billion |

### Size-of-Transaction

The size-of-transaction test is satisfied if the merger or acquisition is valued in excess of \$65.2 million, but a notice and report is required only if the size-of-person test also is met.

### Size-of-Person

The size-of-person test applies only when the transaction value exceeds \$65.2 million but is less than \$260.7 million. When the transaction value falls within this range, the transaction must be reported under the HSR Act if (1) one person to the transaction has total assets or net sales of \$130.3 million or more and (2) the other has total assets or net sales of \$13.0 million or more.

All transactions valued in excess of \$260.7 million will be reportable without regard to the size-of-parties test.

### Filing Fees

Unlike last year, HSR filing fees have not been increased. Filing fees are based upon the size of the transaction, as follows:

| Value of Transaction                         | Filing Fee |
|--|------------|
| Less than \$130.3 million                    | \$45,000   |
| \$130.3 million to less than \$651.7 million | \$125,000  |
| \$651.7 million or more                      | \$280,000  |

### Increased Fines for HSR Violations

Under certain circumstances – such as failure to file notice of a reportable transaction or to produce 4(c) documents – parties can face penalties for failure to comply with the HSR Act. Effective February 9, 2009, the civil penalty amount will increase from \$11,000 per day to \$16,000 per day.

In recent months, the FTC has imposed significant fines for failure to notify a reportable transaction – ranging from \$550,000 to \$1.1 million.

### What This Means

Parties contemplating merger or acquisition activity are strongly encouraged to consult antitrust counsel prior to closing to determine whether premerger notification is required. The

rules governing the calculation of the relevant thresholds and the applicability of particular exemptions to all or part of the transaction are complex.

Note that, even if an acquisition or merger does not meet the dollar threshold, and thus is not reportable under the HSR Act, there may be competitive issues that should be addressed before consummation of the transaction.

The FTC and the Department of Justice have the authority under Section 7 of the Clayton Act and Section 5 of the FTC Act to challenge transactions likely to substantially lessen competition. In December 2008, they each brought suit in federal court seeking to undo already closed acquisitions that had not been subject to the HSR Act.

### For Additional Information

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