

January 25, 2011

FTC Revises Hart Scott Rodino Thresholds For 2011

On January 21, 2011, the Federal Trade Commission (FTC) announced revised notification thresholds pursuant to the Hart Scott Rodino Act (HSR). Section 7A of the Clayton Act, 15 U.S.C. 18a, requires parties to the file pre merger notification with the FTC and the U.S. Department of Justice, Antitrust Division (DOJ) prior to closing a merger or acquisition that meets the HSR's size of transaction and size of person thresholds.

The FTC is required to revise the HSR thresholds annually based on changes in the gross national product. The following adjusted thresholds for 2011 will go into effect 30 days after their date of publication in the Federal Register:

| Original Threshold | 2010 Threshold | 2011 Adjusted Threshold |
|--------------------|------------------|-------------------------|
| \$10 million | \$12.7 million | \$13.2 million |
| \$50 million | \$63.4 million | \$66 million |
| \$100 million | \$126.9 million | \$131.9 million |
| \$110 million | \$139.6 million | \$145.1 million |
| \$200 million | \$253.7 million | \$263.8 million |
| \$500 million | \$634.4 million | \$659.5 million |
| \$1 billion | \$1.2687 billion | \$1.319 billion |

Size of Transaction

Transactions now valued greater than \$66 million will trigger the HSR reporting requirements. The adjusted threshold establishes an absolute floor of \$66 million, meaning that there is no HSR reporting requirement for any transaction valued at \$66 million or less, regardless of the percentage of assets or voting securities to be acquired.

Size of Person

Under the size-of-person test, when the value of a proposed transaction exceeds \$66 million, but is less than \$263.8 million, the transaction must be reported if (1) one person to the transaction has total assets or net sales of \$131.9 million or more and (2) the other has total assets or net sales of \$13.2 million or more.

All transactions valued in excess of \$263.8 million will be reportable without regard to the size-of-person test.

Conclusion

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. More importantly, under certain circumstances, parties can face penalties of up to \$16,000 per day for failure to comply with these filing obligations.

Note that, even if an acquisition or merger does not meet the dollar threshold, and thus is not reportable under HSR, 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.

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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