FTC ANNOUNCES INCREASED HSR AND INTERLOCKING DIRECTORATE THRESHOLDS

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HSR Act Thresholds

The Federal Trade Commission (FTC) recently announced the revised transaction thresholds that trigger the requirement to file a premerger notification and report form under the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act). The FTC revises the thresholds annually based on changes in the gross national product. The new thresholds will be published this week in the Federal Register and will be effective 30 days after publication.

With these recent adjustments to the HSR thresholds, the parties to a transaction must file an HSR notification if a deal meets one of two tests:

(a) The total value of a proposed transaction exceeds **$359.9 million**; or

(b)The total value of a proposed transaction exceeds **$90 million**, and one party has at least **$18 million** in total assets or annual sales, and the other party has at least **$180 million** in total assets or annual sales.

The HSR Act requires parties engaged in certain transactions (including certain mergers, acquisitions, asset sales, joint ventures, and exclusive license deals) to file a notification and report form with both the FTC and Department of Justice, Antitrust Division (DOJ) prior to closing. Reportable transactions cannot be consummated until after a designated period of time (usually 30 days). Although there are certain exemptions to the HSR filing requirements, the $90 million threshold is a key threshold to keep in mind. Any transaction that falls below that threshold is exempt from the filing requirements. However, transactions falling below the HSR Act threshold are not immune from antitrust scrutiny, and can be challenged by relevant authorities before or after the transaction closes.

The filing fees under the HSR Act remain the same, but with the following adjusted transaction value thresholds:

Value of Transaction

Filing Fee

More than $90 million, but less than $180 million

$45,000

$180 million or greater, but less than $899.8 million

$125,000

$899.8 million or greater

$280,000

Interlocking Directorate Thresholds

The FTC announced revised thresholds for the prohibition on interlocking directorates under Section 8 of the Clayton Antitrust Act of 1914 (the "Clayton Act"). Under the revised thresholds, a single person cannot serve as an officer or director of two competing corporations if each corporation has capital, surplus, and undivided profits in excess of $36,564,000. This prohibition does not apply if the competitive sales of either corporation is less than (a) $3,656,400, or (b) 2% of such corporation's total sales, or the competitive sales of both corporations are under 4% of that corporation's total sales. The terms "competitive sales" and "total sales" have specific meanings pursuant to the Clayton Act.

Civil Penalties

In a separate announcement, the maximum civil penalty amount for violations of the HSR Act will increase from $41,484 to $42,530 per day, effective upon publication in the Federal Register. The new penalty levels apply to penalties assessed after the effective date, regardless of whether the associated violation occurred in advance of such date.

If you have any questions relating to the HSR Act, the Clayton Act, or other antitrust issues, please contact Valerie Stevens or Matthew Scherer.

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