

January 16, 2009

## **Hart Scott Rodino Act: Annual Jurisdictional Thresholds Revisions and Civil Penalties Adjustments**

The Federal Trade Commission (FTC) has announced its annual revisions to the Hart Scott Rodino Antitrust Improvements Act of 1976 (HSR Act) jurisdictional thresholds. The revised thresholds will become effective on February 12, 2009 and will apply to all transactions closing on or after that date. The new thresholds will remain in effect until the next annual adjustment, expected in the first quarter of 2010. The FTC has also announced an inflationary adjustment to civil penalties for violations under the HSR Act, which will become effective on February 9, 2009.

### **Applicable Transactions**

A premerger notification filing under the HSR Act is required in connection with certain mergers and acquisitions of voting securities or assets that meet specified thresholds and are not otherwise exempt. The premerger notification filing requirement under the HSR Act will also apply to the acquisition of interests in unincorporated entities (e.g. partnerships and limited liability companies) if certain requirements are met<sup>1</sup>. An exemption may be applicable depending on the business or the assets involved or the nature of the buyer in some circumstances, among other things.

### **Size of Transaction Threshold**

Under the new thresholds, the minimum transaction report threshold has increased from \$63.1 million to \$65.2 million.

### **Size of Person Threshold**

For transactions valued at or below \$260.7 million, the Size-of-Person test must also be met for the transaction to be reportable. With the new thresholds, the Size-of-Person test will be met if one person (either acquiring or acquired) has annual net sales or total assets equal to or exceeding \$13 million, and the other person has annual net sales or total assets equal to or exceeding \$130.3 million. For purposes of the Size-of-Person test, annual net sales and total assets are determined based on the person's most recent regularly prepared financial statements.

### **Filing Fees**

The filing fees have remained the same but the thresholds have increased.

For transactions valued:

- Above \$65.2 million and below \$130.3 million, the fee will be \$45,000.
- At or above \$130.3 million and below \$651.7 million, the fee will be \$125,000.
- At or above \$651.7 million, the fee will be \$280,000.

### Civil Penalties for HSR Act Violations

The civil penalties for premerger notification violations under the HSR Act have increased from \$11,000 per day to \$16,000 per day. The civil penalties were last adjusted in 1996 and will remain in effect until the next periodic adjustment.

Before closing transactions with values near the reporting threshold, it is important to determine whether a premerger notification filing must be made. The rules governing computation of thresholds, transaction valuation and the applicability of exemptions are complex, and we would be pleased to assist with your analysis and any required filing.

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<sup>1</sup> The HSR Act premerger notification filing requirement will apply to unincorporated entities if the following requirements are met: (1) the acquiring person obtains control and (2) the value of the interests held by the acquiring person are valued at or above the specified thresholds.

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