Cooley

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The Federal Trade Commission officially published its just announced annual revisions to the thresholds applicable to the Hart-Scott-Rodino Act and Clayton Act Section 8, giving the new HSR thresholds an **effective date of February 22, 2010** and making the revised Section 8 thresholds immediately applicable. This year is the first time that the revisions to the thresholds, which are annually adjusted based on changes in the gross national product, have led to a *reduction* in the size of the relevant thresholds, increasing the number of transactions that are potentially reportable.

The key adjustments to the HSR premerger notification thresholds are:

- the notification threshold (size-of-transaction test) will be lowered from $65.2 million to $63.4 million
- the notification threshold (size-of-person test) that previously was set at $130.3 million and $13 million relating to the annual net sales and/or total assets of the acquiring and acquired persons will be lowered to $126.9 million and $12.7 million
- the level at which size-of-person test is eliminated for particularly large deals will be lowered from those valued in excess of $260.7 million to those valued in excess of $253.7 million
- the values associated with the filing fee tiers will be changed accordingly, with the three tiers (representing filing fees of $45,000, $125,000, and $280,000 respectively) now to be set at (1) transactions valued in excess of $63.4 million but less than $126.9 million; (2) transactions valued from $126.9 million but less than $634.4 million; and (3) transactions valued in excess of $634.4 million
- corresponding changes will be made throughout the HSR rules to conform them to the revised thresholds. For example, the $65.2 million threshold applicable to analysis of the exemptions for the acquisition of foreign assets and foreign voting securities will be lowered to $63.4 million

Failure to file an HSR Notification and Report Form is still subject to a statutory penalty of up to $16,000 per day of noncompliance.

The Federal Trade Commission also voted 4-0 to adjust the thresholds applicable for Section 8 of the Clayton Act, which trigger prohibitions on interlocking directorates. The Commission also revises those thresholds annually, based on the change in the level of gross national product. The new thresholds, which are also reductions from the thresholds currently in force, are $25,841,000 for Section 8(a)(1) and $2,584,100 for Section 8(a)(2)(A). The notice announcing the revisions will be published in the Federal Register shortly and will be effective upon publication.

The HSR thresholds are only one part of the analysis to determine whether an HSR filing will be required, and the analysis relating to interlocking directorates under Section 8 of the Clayton Act turns on numerous complex factors, so please contact one of the Cooley Antitrust contacts above with any questions you have.

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