

Cooley

January 21, 2011

On January 21, 2011, the Federal Trade Commission announced modifications to the Hart-Scott-Rodino Act (HSR) thresholds (relating both to jurisdictional triggers and the filing fee tiers), with the changes to take effect 30 days following its publication in the Federal Register, which should occur shortly.

The key adjustments to the HSR premerger notification thresholds are:

- the notification threshold (size-of-transaction test) will be raised from \$63.4 million to \$66 million
- the notification threshold (size-of-person test) that previously was set at \$126.9 million and \$12.9 million relating to the annual net sales and/or total assets of the acquiring and acquired persons will be raised to \$131.9 million and \$13.2 million
- the level at which size-of-person test is eliminated for particularly large deals will be raised from those valued in excess of \$253.7 million to those valued in excess of \$263.8 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 \$66 million but less than \$131.9 million; (2) transactions valued from \$131.9 million but less than \$659.5 million; and (3) transactions valued in excess of \$659.5 million
- corresponding changes will be made throughout the HSR rules to conform them to the revised thresholds. For example, the \$63.4 million threshold applicable to analysis of the exemptions for the acquisition of foreign assets and foreign voting securities will be raised to \$66 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 HSR thresholds are only one part of the analysis to determine whether an HSR filing will be required, so please contact any of the Cooley Antitrust contacts above with any reportability questions you have.

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