Cooley

Hart-Scott-Rodino Thresholds Increased for 2019

February 20, 2019

Basic threshold now $90 million

Filing thresholds under the Hart-Scott-Rodino Act will increase in mid-March by approximately 6.6%, based on the change in the US gross national product. The most critical threshold, which often impacts whether a filing is required, is the size-of-transaction threshold, which will increase from $84.4 million to $90.0 million.

The HSR Act requires that parties to mergers and acquisitions, including acquisitions of voting securities and assets, file notifications with the Federal Trade Commission and Department of Justice and observe a statutory waiting period if the acquisition meets specified size-of-person and size-of-transaction thresholds and does not fall within an exemption to the HSR Act.

The FTC has also updated the filing fee tiers and certain exemption thresholds.

These new thresholds will go into effect 30 days after they are published in the Federal Register, which is expected to happen within a few days. While the FTC is statutorily required to announce threshold adjustments by the end of January each year, the federal government shutdown resulted in a delay of the announcement.

In addition to the increase in the minimum size-of transaction threshold, the most significant adjustments are the following:

- The size-of-person tests will increase from $168.8 million to $180.0 million and from $16.9 million to $18.0 million, with respect to the required level of annual net sales or total assets;
- The larger size-of-transaction threshold, which is applicable even if the size-of-person test is not met, will increase from $337.6 million to $359.9 million. This means that transactions valued in excess of $359.9 million will be reportable regardless of whether the size-of-person threshold is met (unless an exemption applies).
- The filing fee levels will be adjusted as follows:
    - A $45,000 filing fee will be required for transactions valued in excess of $90.0 million but below $180.0 million;
    - A $125,000 filing fee will be required for transactions valued from $180.0 million to $899.8 million; and
    - A $280,000 filing fee will be required for transactions valued at or above $899.8 million.

The FTC also announced revised dollar thresholds applicable to the de minimis size criteria applied under Section 8 of the Clayton Act, governing the legality of interlocking directorates.

Corporations will be covered by Section 8 if each one has capital, surplus and undivided profits aggregating more than $10,000,000 (as adjusted), with the exception that no corporation is covered if the competitive sales of either corporation is less than $1,000,000 (as adjusted). The revised levels for these thresholds, to take effect upon publication in the Federal Register, are $36,564,000 and $3,656,400.

Also effective upon publication in the Federal Register is an adjustment to the daily penalty for HSR violations, which has increased to $42,530 per day.

HSR filing analyses, and determinations of which interlocking directorates may violate Section 8 of the Clayton Act, are highly technical. If you have any questions, please reach out to a member of your Cooley corporate team or to any of our antitrust contacts below.

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