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Hart-Scott-Rodino Act Thresholds Increase for 2020

January 29, 2020

Basic threshold $94 million effective February 27

Filing thresholds under the Hart-Scott-Rodino Act will increase 4.4%, effective February 27, 2020, based on the change in the US gross national product during 2019. The critical size-of-transaction threshold, which often impacts whether a filing is required, will increase from $90 million to $94 million.

The HSR Act requires that parties to mergers and acquisitions, including acquisitions of voting securities and assets (which may include even intellectual property licenses and executive compensation), file notifications with the Federal Trade Commission and US Department of Justice and observe a statutory waiting period if the acquisition meets specified size-of-transaction and size-of-person thresholds and does not fall within an exemption.

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

- The size-of-person test will increase from $180.0 million to $188.0 million and from $18.0 million to $18.8 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 $359.9 million to $376.0 million. This means that acquisitions of more than $376.0 million will be reportable regardless of whether the size-of-person threshold is met, unless an exemption applies

In addition to increases to the jurisdictional thresholds, the filing fee tiers and certain exemption thresholds will also increase. The filing fees themselves, however, will not change.

- The filing fee levels will be adjusted as follows:
  - A $45,000 filing fee will be required for transactions valued in excess of $94.0 million but below $188.0 million
  - A $125,000 filing fee will be required for transactions valued from $188.0 million but below $940.1 million
  - A $280,000 filing fee will be required for transactions valued at or above $940.1 million

The FTC also recently published revised dollar thresholds applicable to the size criteria applied under Section 8 of the Clayton Act, governing the legality of interlocking directorates. Competitor corporations are covered by Section 8 if each one has capital, surplus and undivided profits aggregating more than $10 million (as adjusted), with the exception that no corporation is covered if the competitive sales of either corporation is less than $1 million (as adjusted). The revised levels for these thresholds, which were effective upon publication on January 21, are $38,204,000 and $3,820,400, respectively.

Also effective as of January 14, 2020, upon publication, is an inflation adjustment on the daily penalty for HSR violations, which increased from $42,530 to $43,280 per day. The same penalty is applicable to certain other laws enforced by the FTC.

HSR filing obligation 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 our antitrust group.

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