

Revised 2017 Hart-Scott-Rodino Antitrust & Thresholds

January 24, 2017

On January 19, 2017, the Federal Trade Commission announced its annual revisions to the Hart-Scott-Rodino Act ("HSR") jurisdictional thresholds, increasing key thresholds approximately 3.3% to reflect changes in the gross national product ("GNP"). The HSR Act requires that parties to certain mergers and acquisitions, including acquisitions of voting securities and assets, file notifications with the FTC and DOJ 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.

In addition to adjustments to the jurisdictional thresholds, the FTC also updated the filing fee tier thresholds and certain exemption thresholds applicable to HSR's mandatory reporting regime. These revised HSR thresholds will go into effect 30 days after they are published in the Federal Register. Because the FTC is an independent agency and not a federal executive department or agency, it is not directly covered by President Trump's January 20th freeze of all pending regulations. Accordingly, it is anticipated that the revised thresholds will be published later this week and become effective in late February.

Among the most significant adjustments are the following:

- The size-of-transaction threshold, which triggers most filings, will increase to \$80.8 million, and the larger size-of-transaction threshold, which removes any requirement to also satisfy the size-of-person test, will increase to \$323 million;
- The size-of-person test will increase to \$161.5 million and \$16.2 million, with respect to the required level of annual net sales or total assets; and
- The filing fee levels will be adjusted as follows:
 - A \$45,000 filing fee will be required for transactions valued in excess of \$80.8 million but below \$161.5 million;
 - A \$125,000 filing fee will be required for transactions valued from \$161.5 million but below \$807.5 million; and
 - A \$280,000 filing fee will be required for transactions valued at or above \$807.5 million.

Earlier this month, the FTC announced its adjustment to the daily penalty for HSR violations. The penalty increased last August from \$16,000 to \$40,000 per day and is now subject to annual adjustment based on the GNP. On January 12, the FTC indicated the daily penalty would increase to \$40,654, and the adjustment became effective earlier today, January 24, 2017.

The FTC's January 19 release also announced the 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, to take effect immediately upon publication in the Federal Register, are \$32,914,000 and \$3,291,400. As noted above, it is anticipated that publication will occur later this week.

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 the antitrust contacts listed.

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