

Client Alert

FTC Announces New HSR Reporting Thresholds for 2011

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR”) requires parties to transactions meeting certain size thresholds to make notification filings with the Federal Trade Commission and the Antitrust Division of the U.S. Department of Justice, and observe a waiting period before closing. On January 21, 2011, the Federal Trade Commission announced increases in the reporting thresholds under HSR. Changes to the HSR reporting thresholds are made as a result of HSR amendments enacted in 2000 that require the FTC to adjust reporting and exemption thresholds based on annual changes in the Gross National Product. The revised thresholds were published in the Federal Register on January 25, 2011 and will be effective on and after February 24, 2011.

HSR applies to acquisitions of assets, voting securities and non-corporate interests (such as limited liability company membership interests), and also may apply to the formation of joint ventures, corporations and non-corporate entities (such as LLCs or limited partnerships).

Revised HSR Reporting Thresholds

Under the new thresholds:

- The basic HSR threshold applicable to most acquisitions is **\$66.0 million** (up from \$63.4 million).
- Transactions valued at or above **\$66.0 million** but less than **\$263.8 million** (up from \$253.7 million) are reportable if the ultimate parent entity of one party to the transaction, together with all entities it controls, has sales or assets of at least **\$131.9 million** (up from \$126.9 million), and the ultimate parent entity of the other party, together with all entities it controls, has sales or assets of at least **\$13.2 million** (up from \$12.7 million).
- Transactions valued at or above **\$263.8 million** (up from \$253.7 million) are reportable without regard to the size of the parties.

Even if a transaction is reportable based on these thresholds, it may qualify for an exemption from the HSR filing requirements. For example, exemptions are available for certain acquisitions of non-U.S. assets and voting securities. Many of the dollar thresholds applicable to the various HSR exemptions have also decreased.

HSR Filing Fees

HSR filing fees, which did not change as a result of the annual reporting threshold adjustment, are as follows:

- \$45,000 for transactions valued at more than **\$66.0 million** but less than **\$131.9 million**.
- \$125,000 for transactions valued at or above **\$131.9 million** but less than **\$659.5 million**.
- \$280,000 for transactions valued at or above **\$659.5 million**.

Penalty for Failure to Make an HSR Filing

Companies considering transactions should seek legal advice to determine if an HSR filing will be required. Complex rules govern transaction valuation and the availability of exemptions under HSR. Failure to make a required HSR filing before closing is a violation of federal law and can subject parties to penalties of up to \$16,000 per day for each day of noncompliance. Penalties can also be imposed on parties who submit incomplete filings (even if the filing was timely made).

If you have questions about the new HSR thresholds or how to apply HSR to a specific transaction, please contact Martin Brinkley (919.821.6702; mbrinkley@smithlaw.com), or the Smith Anderson lawyer with whom you work.

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