

Antitrust | January 23, 2007

## Revised HSR Act Thresholds

The U.S. Federal Trade Commission (“FTC”) has announced revised reporting thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and its implementing rules, as amended (the “HSR Act”). These new thresholds apply to all transactions that will close on or after February 21, 2007.

The HSR Act requires that parties to proposed stock or asset acquisitions exceeding certain thresholds file premerger notification reports with the FTC and the Antitrust Division of the U.S. Department of Justice and then observe statutorily prescribed waiting periods (usually 30 days) prior to closing the transaction.

The announced changes are mandated under amendments to Section 7A of the Clayton Act introduced in 2000, which require that the FTC revise the HSR Act thresholds annually, beginning in 2005, based on the change in the gross national product. The new thresholds were published in the Federal Register on January 22, 2007 and will go into effect on February 21, 2007.

The primary changes are increases in the “size-of-transaction” and “size-of-person” thresholds under the HSR Act. Currently, an acquisition of voting securities or assets may be reportable if the securities or assets held as a result of the transaction are valued in excess of \$56.7 million (“size-of-transaction test”), and either the acquiring or acquired party has

annual net sales or total assets of at least \$11.3 million and the other party has annual net sales or total assets of at least \$113.4 million (“size-of-person test”). The size of the parties is irrelevant if the value or size of the transaction exceeds \$226.8 million.

Under the new thresholds, an acquisition may be reportable if valued in excess of \$59.8 million and the parties to the transaction have annual net sales or total assets of at least \$12 million and \$119.6 million under the size-of-person test. If the transaction is valued at greater than \$239.2 million, the size-of-person test is not applicable.

The revisions will also increase notification thresholds for acquisitions of additional voting securities from the same party. As a result, notifications will be required at each of the following thresholds: \$59.8 million; \$119.6 million; \$597.9 million; 25% of the voting securities if their value exceeds \$1,195.8 million; and 50% of the voting securities if their value exceeds \$59.8 million.

Filing fees remain the same, but the thresholds that determine the fees have been revised.

Under the new thresholds, acquiring persons in transactions valued above \$59.8 million up to \$119.6 million must pay a fee of \$45,000.

For transactions valued at \$119.6 million up to \$597.9 million, a \$125,000 fee is required. A \$280,000 fee is applied to transactions valued at or above \$597.9 million.

Finally, the thresholds applicable to certain exemptions under the HSR Act have also been revised upwards. For example, acquisitions of non-U.S. assets will not be reportable unless the acquired assets generated sales in or into the U.S. exceeding \$59.8 million. Similar changes apply with respect to acquisitions of voting securities of non-U.S. issuers.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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