Hart-Scott-Rodino Premerger Reporting Thresholds Increase

January 25, 2012
Attorney Articles

On January 24, the Federal Trade Commission announced the annual adjustment of the thresholds that trigger reporting obligations (and the mandatory waiting period) under the Hart-Scott Rodino (HSR) Act. The new thresholds become effective in late February or early March (30 days from publication in the Federal Register, which had not occurred as of January 25) and will remain in effect until next year's announcement.

Under the new thresholds, acquisitions that result in the buyer's holding –

- less than $68.2 million in voting securities and/or assets of the seller will not be reportable (subject to the rules on aggregation).
- more than $68.2 million but less than $272.8 million are reportable if the "size of persons" test is satisfied[1].
- more than $272.8 million are reportable regardless of the size of persons.

Exemptions from reporting are available for certain acquisitions, and these increases also affect some of the exemptions (most particularly the exemptions for certain acquisitions of foreign issuers or foreign assets).

The HSR filing fees have not increased, but the levels that trigger larger filing fees have increased.

- The basic filing fee remains $45,000 and is payable on transactions valued at more than $68.2 million but less than $136.4 million.
- For transactions valued at more than $136.4 million but less than $682.1 million, the filing fee is $125,000.
- For transactions valued at more than $682.1 million, the filing fee is $280,000.

The new thresholds for the Act's prohibition on interlocking directorates are $27,784,000 for Section 8(a)(1) and $2,778,400 for Section 8(a)(2)(A).

[1]The "size of persons" test requires that one "person" have at least $136.4 million in annual net sales or total assets and the other "person" have $13.6 million in total assets (or, in some cases, annual net sales). "Person" means the ultimate parent of the legal party to a transaction, and all entities controlled by the ultimate parent.

© 2012 Dorsey & Whitney LLP. This article is intended for general information purposes only

Related Attorneys

Michael A. Lindsay
James Nichols

Related Services

Antitrust and Competition Law
Mergers and Acquisitions

and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney-client relationship is not created or continued by reading this article. Members of the Dorsey & Whitney LLP group issuing this communication will be pleased to provide further information regarding the matters discussed therein.