

## Haynes and Boone's Newsroom

### Hart-Scott-Rodino Act: Annual Jurisdictional Thresholds Revisions 01/18/2013 Debra Gatison Hatter, Jennifer T. Wisinski, Nora Whitehead

The Federal Trade Commission (FTC) announced its annual revisions to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) jurisdictional thresholds effective on February 11, 2013. The revised thresholds will apply to any transaction closing on or after that date. The thresholds are adjusted annually to reflect changes in the Gross National Product and will remain in effect until the next annual adjustment, expected in the first quarter of 2014.

#### **Applicable Transaction**

A premerger notification filing and 30-day initial waiting period under the HSR Act is required in connection with certain transactions, such as, a merger, acquisition or divestiture, joint venture or exclusive license, that meet specified thresholds and are not otherwise exempt. The premerger notification filing requirement under the HSR Act will also apply to the acquisition of interests in unincorporated entities (e.g., partnerships and limited liability companies) if the thresholds are met and there is no available exemption, but only if the acquiring person will control the entity. An exemption may be applicable depending on the type of business and the assets involved as well as the nature of the buyer under certain circumstances.

#### **"Size of Transaction" Threshold**

Under the new thresholds, the minimum transaction threshold has increased from \$68.2 million to \$70.9 million.

#### **"Size of Person" Threshold**

For transactions valued at or below \$283.6 million, the "Size of Person" test must also be met for the transaction to be reportable. With the new thresholds, the "Size of Person" test will be met if one person (either acquiring or acquired) has annual net sales or total assets equal to or exceeding \$141.8 million, and the other person has annual net sales or total assets equal to or exceeding \$141.8 million. For purposes of the "Size of Person" test, annual net sales and total assets are determined based on the person's most recent regularly prepared financial statements.

#### **Interlocking Directorates Threshold**

The FTC also announced revisions to the thresholds that trigger a prohibition preventing companies from having interlocking memberships on their corporate boards of directors under Section 8 of the Clayton Act. The new thresholds for the Act's prohibition on interlocking directorates are \$28,883,000 for Section 8(a)(1) and \$2,888,300 for Section 8(a)(2)(A).

#### **Filing Fees**

The filing fees have remained the same but the thresholds have increased. For transactions valued:

- Above \$70.9 million and below \$141.8 million, the fee will be \$45,000.
- At or above \$141.8 million and below \$709.1 million, the fee will be \$125,000.
- At or above \$709.1 million, the fee will be \$280,000.

Before closing transactions with values near the reporting threshold, it is important to determine whether a premerger notification filing must be made. The rules governing computation of thresholds, transaction valuation and the applicability of exemptions are complex. We would be pleased to assist with your analysis and any required filing.

If you have any questions, please contact one of the following attorneys:

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