

Client Alert

A report
for clients
and friends
of the Firm **January 2009**

Revised Hart-Scott-Rodino Jurisdictional Thresholds and New Penalties Announced

Effective February 12, 2009, the notification thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 USC §18a (2001), (the “HSR Act” or the “Act”) will be increased. The increases, which occur annually, are a product of the indexing of the HSR Act’s thresholds required by the 2000 amendments to the Act.

As a result of the 2009 revisions to the HSR Act’s jurisdictional thresholds, announced January 6, 2009, the basic notification threshold for all transactions will be increased from \$63.1 million to \$65.2 million.

Unless otherwise exempt, an entity that is not controlled by any other entity or individual (a “Person”) that, as a result of an acquisition, will hold voting securities, assets, or interests in an unincorporated entity of any other Person valued in excess of the HSR Act’s jurisdictional threshold may be required to file notification under the Act and to observe the applicable waiting period before consummating the transaction.

Transactions valued at \$260.7 million or less (\$252.3 million prior to February 12, 2009) are not subject to the HSR Act unless the parties also meet the size-of-person thresholds. Under the revised thresholds, the size-of-person thresholds will generally be met where a person with annual net sales or total assets of \$130.3 million acquires a person with annual net sales or total assets of \$13 million, or vice-versa.

In each instance where an acquiring person files under the Act, the acquired person is also required to submit a filing. The purpose of the HSR filing is to enable antitrust regulators to review the transaction and investigate and address potential antitrust violations prior to its consummation.

The FTC also has announced that pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, it is increasing the penalty for HSR violations. Effective February 9, 2009, the penalty for HSR Act violations will be increased from \$11,000 per day to \$16,000 per day.

The following charts provide a summary of the HSR Act’s threshold adjustments:

SIZE-OF-TRANSACTION		Old Threshold	New Threshold (Effective February 12, 2009)
Jurisdictional Threshold	Basic Notification Threshold	\$63.1 Million	\$65.2 Million
	Subsequent Notification Thresholds	\$126.2 Million	\$130.3 Million
		\$630.8 Million	\$651.7 Million
		25% (if value exceeds \$1.2616 billion)	25% (if value exceeds \$1.3034 billion)
	50% (where value exceeds \$63.1 million)	50% (where value exceeds \$65.2 million)	

SIZE-OF-PERSON		Old Threshold	New Threshold (Effective February 12, 2009)
Jurisdictional Threshold	Size-of-Person Thresholds	\$12.6 Million	\$13 Million
		\$126.2 Million	\$130.3 Million
	Size-of-Person Inapplicable Where Transaction Exceeds	\$252.3 Million	\$260.7 Million

Summary

As evidenced by the continuing emphasis on enforcement reported in our January 5, 2009 Client Alert – Spirited Antitrust Enforcement¹ – the antitrust agencies take strict application of the requirements of the HSR Act very seriously. Correct application of the HSR Act can be complex and typically requires a detailed and careful analysis of a transaction. Proskauer Rose’s HSR team has extensive experience with the issues presented under the HSR Act. If you have any questions concerning a potential HSR filing requirement please contact one of the lawyers identified in this publication.

Filing Fees

The dollar amount of the filing fees payable to the Federal Trade Commission with HSR Act filings are not subject to indexing; however, the thresholds applicable to the statutory filing fees do adjust with indexing. As of February 12, 2009, the schedule for filing fees will be as follows:

Transaction Size	Filing Fee
Greater than \$65.2 million but less than \$130.3 million	\$45,000
\$130.3 million or greater but less than \$651.7 million	\$125,000
\$651.7 million or greater	\$280,000

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Client Alert

The Antitrust and Trade Regulation Practice Group at Proskauer Rose LLP litigates on behalf of plaintiffs and defendants, and counsels clients in all areas of antitrust law, including Hart-Scott-Rodino Act compliance in mergers and acquisitions.

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¹ http://www.proskauer.com/news_publications/client_alerts/content/2009_01_05_b/res/id=sa_PDF/17290-Spirited%20Antitrust%20Enforcement-ca-v2.pdf