

2009 CHANGES TO HART-SCOTT-RODINO FILING THRESHOLDS AND PENALTIES

February 3, 2009

The Federal Trade Commission (FTC) announced on January 7, 2009, the revised transaction thresholds that trigger the requirement to file a Premerger Notification and Report Form under the Hart-Scott-Rodino Antitrust Improvements Act (Act).

As most readers know, the Act requires that certain acquisitions of stock or assets and certain joint venture transactions be reported to both the Department of Justice, Antitrust Division (DOJ) and the FTC before closing. Reportable transactions cannot be consummated until after a designated period of time (usually 30 days, unless earlier termination is granted or a further request for information is issued by the agencies).

With these recent adjustments to the Hart-Scott-Rodino thresholds, subject to certain available statutory exemptions, generally a Hart-Scott-Rodino notification must be filed if a transaction meets one of two tests:

1. If the value of the assets or securities being acquired exceeds \$65.2 million (previously, \$63.1 million) and the total assets or sales for one party exceeds \$130.3 million and for the other party exceeds \$13 million (these size-of-person thresholds were previously \$126.2 million and \$12.6 million respectively); or
2. The total value of a proposed transaction exceeds \$260.7 million (previously \$252.3 million), regardless of the size of the parties.

These new thresholds will take effect February 12, 2009, and will apply to all transactions closing after that date. The FTC is required under the Act to adjust the thresholds annually based on changes in the gross national product.

In addition, the FTC has adjusted civil penalties associated with the failure to comply with the Act. From February 9, 2009, the penalty will increase from \$11,000 per day to \$16,000 per day.

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