SAUL EWING ARNSTEIN & LEHR LLP

Alert

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It's That Time Again... FTC Announces New HSR Filing Thresholds

SUMMARY

As it does annually around this time, on January 28, 2020, the Federal Trade Commission ("FTC") announced the annual adjustments to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"). The key HSR Section 7A changes are as follows:

Test	2020 Adjusted Threshold	Prior (2019) Threshold
Lower Party Size	$18.8 million	$18.0 million
Higher Party Size	$188.0 million	$180 million
Minimum Transaction Size	$94.0 million	$90.0 million
Mandatory Filing Required* -- Large Transation, Size of Parties Irrelevant	$376.0 million	$359.9 million

* Unless no filing is required as a result of the application of an HSR exemption.

The changes can be found here (Section 7A). These changes take effect 30 days after publication in the Federal Register, which occurred on January 28, 2020, making the changes applicable to transactions which close on or after February 27, 2020.

While the HSR filing fees do not change, the new thresholds impact the ranges at which the fees apply, i.e., $45,000 (deal value under $188 million), $125,000 (deal value $188 million to $940.1 million), and $280,000 (deal value over $940.1 million).

In addition, there are increases in the HSR Section 8 interlocking directorates triggers – to $38,204,000 (aggregate capital, surplus and undivided profits of each party) and to $3,820,400 (each party's competitive sales). The changes, found here, took effect immediately upon publication in the Federal Register.

It is absolutely critical to remember that HSR thresholds are simply filing triggers -- they are not no-scrutiny guarantees. Antitrust regulators (FTC, the Department of Justice, state attorneys general) and, at times, private parties, have the ability to challenge transactions which do not require HSR filings, and they also have the ability to challenge closed transactions whether subject to and cleared under HSR, or closed without being required to make an HSR filing. In other words, The Clayton Act Section 7 prohibition of mergers and acquisitions where the effect "may be substantially to

lessen competition, or to tend to create a monopoly," along with the Sherman Act's Section 2 prohibition of actual and attempted monopolization, remain in play both before and after the eggs of a transaction are scrambled by a closing.

Saul Ewing Arnstein & Lehr LLP regularly represents parties engaged in all types of business combinations and affiliations, whether by merger, acquisition, joint venture or otherwise before all federal and state antitrust regulatory authorities. For more information, or to discuss any questions you may have about that practice or this alert, please contact Michael A. Finio in our Harrisburg Office, at mike.finio@saul.com, 717-238-7671 (office) or 717-460-3738 (mobile, SMS texts acceptable).

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