



Antitrust, Competition & Distribution Update

January 2012

HSR Insights

2012 Thresholds for Hart-Scott-Rodino Antitrust Improvements Act of 1976

On January 24, 2012, the Federal Trade Commission (FTC) announced the 2012 revised jurisdictional thresholds under the HSR Act, which will become effective in late February or early March 2012.

The FTC revises the thresholds annually based on changes in the gross national product from the previous year. The 2012 thresholds will increase from those in 2011 due to the continued upturn in the U.S. economy.

New 2012 Jurisdictional Thresholds

Under 2012 jurisdiction thresholds , a transaction will be reportable if:	
Size of Transaction Test	The acquiring person will hold, as a result of the transaction, an aggregate total amount of voting securities, assets and/or interests in non-corporate entities of the acquired person valued in excess of \$68.2 million ; and
Size of Person Test	The acquiring person or the acquired person has annual net sales or total assets of \$13.6 million or more, and the other person has annual net sales or total assets of \$136.4 million or more.
	Transactions valued at greater than \$272.8 million are reportable, regardless of the size of person test.

New 2012 Filing Fee Thresholds

Filing fee	The 2012 filing fee thresholds are as follows:
\$45,000	If the aggregate amount of voting securities, assets and/or interests in non-corporate entities to be held as a result of the transaction is greater than \$68.2 million but less than \$136.4 million .
\$125,000	If the aggregate amount of voting securities, assets and/or interests in non-corporate entities to be held as a result of the transaction is equal to or greater than \$136.4 million but less than \$682.1 million .
\$280,000	If the aggregate amount of voting securities, assets and/or interests in non-corporate entities to be held as a result of the transaction is equal to or greater than \$682.1 million .

Noteworthy Reminders

Reminder for Company Officials – Investments in Company Stock

Company officials are well advised to consult with counsel and consider the HSR Act in connection with their investment planning and any acquisitions of company stock. Even small investments may cause an official's holdings to cross an HSR threshold, triggering a filing requirement. Spending time to institute an HSR compliance program is preferable to having to make a corrective filing and potentially paying a penalty in connection with an inadvertent violation.

The chief executive officer of Comcast Corporation recently agreed to pay a \$500,000 penalty to settle FTC charges that he violated the HSR Act in connection with his acquisitions of Comcast stock. The FTC alleged that the CEO failed to make filings under the HSR Act before acquiring the shares.

Acquisitions of company stock by an executive, officer or director of that company can easily trigger a filing requirement. The HSR Act requires aggregation of the value of voting shares already held (and not previously the subject of an HSR filing) together with the shares to be acquired. Accordingly, even a small acquisition of voting securities can trigger a filing obligation if the company official already holds a large position. The Comcast CEO exceeded an HSR Act notification filing threshold when he acquired common stock upon the vesting of outstanding restricted stock unit awards and the separate reinvestment of dividends and short-term interest through his 401(k) account.

If the HSR Act applies to an acquisition of voting securities, both the notification and waiting period requirements must be satisfied prior to the acquisition of beneficial ownership of the shares. Failure to comply may result in civil penalties of up to \$16,000 for each day that the company official is in violation.

Reminder for HSR Filings – Guilty Plea for Submitting False HSR Documents

Those creating company documents that analyze potential merger and acquisition transactions should remember that those documents may someday be part of a filing with the FTC and the Department of Justice, Antitrust Division (DOJ). The HSR Act requires that parties file documents known as Item 4(c) documents – all studies, surveys, analyses and reports prepared by or for any officer or director for the purpose of evaluating or analyzing an acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. If the person filing notification withholds or redacts any documents required by Item 4(c) based on a claim of privilege, the person must provide the basis for the claim.

Nautilus Hyosung Holdings Inc., a potential buyer, recently agreed to plead guilty and pay a \$200,000 criminal fine for

obstruction of justice in connection with a filing under the HSR Act and a related investigation by the DOJ. According to court documents, an executive altered and directed other corporate employees to alter existing corporate documents with the intent to impair their integrity and availability for use in an official proceeding. The alterations misrepresented and minimized the competitive impact of the proposed acquisition.

FOR MORE INFORMATION

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