

LEGAL DEVELOPMENTS

February 2, 2005

Increase of the Hart-Scott-Rodino Merger Notification Thresholds

The Federal Trade Commission (“FTC”) has announced small upward adjustments to the merger notification thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). The 2000 amendments to the HSR Act require the FTC (commencing in September 2004) to make annual inflationary adjustments to the merger notification thresholds.

The FTC increases notification and filing fee thresholds by 6.13 percent. Effective March 2, 2005, the FTC has raised the current merger notification thresholds by 6.13 percent. Hence, notification will now be required under the HSR Act where: (1) the transaction size exceeds \$53.1 million (up from \$50 million) and the sizes of two involved parties are equal to or exceed \$10.7 million and \$106.2 million, respectively (up from \$10 million and \$100 million, respectively), or (2) the transaction size exceeds \$212.3 million (up from \$200 million).

The FTC also adjusted the filing fee thresholds accordingly (though not the fees themselves):

Filing Fee	Size of transaction (new)
\$45,000	Valued at greater than \$53.1million but less than \$106.2 million
\$125,000	Valued at \$106.2 million or greater but less than \$530.7 million
\$280,000	Valued at \$530.7 million or greater

Transactions filed under the old thresholds do not become non-reportable if below the new thresholds. The FTC has taken the position that filings made under the old thresholds cannot be withdrawn where the increases cause the transaction (prior to the termination of the waiting period) to fall below the new thresholds. Such circumstances will be rare in any event.

Upward adjustments of the thresholds may lessen filing obligations for same target. Once the waiting period for a filing has expired, there is a 5 year notification exemption for additional acquisitions of the voting securities of the same target as long as the aggregate of the acquisitions does not exceed the next highest threshold. The annual adjustments affect these thresholds as well. Thus, in the years following a reported acquisition of voting securities, greater additional acquisitions of the voting securities of the same target will be allowed without filing an additional HSR form. On a one year basis the increase may be negligible, but on a five year basis the impact will be more substantial.

If you would like more information about these changes, please contact Michael Keeley at (212) 728-2231, Lauren Albert at (212) 728-2230 or any other AV&H attorney.

Axinn, Veltrop & Harkrider LLP

1370 Avenue of the Americas
New York, NY 10019
Tel: 212 728 2200
Fax: 212 728 2201

90 State House Square
Hartford, CT 06103
Tel: 860 275 8100
Fax: 860 275 8101

1801 K Street, N.W., Suite 411
Washington, DC 20006
Tel: 202 912 4700
Fax: 202 912 4701

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