AntitrustConnect Blog

Adjusted HSR Premerger Notification Thresholds Take Effect February 25

Jeffrey May (Wolters Kluwer) · Tuesday, January 26th, 2016

The Federal Trade Commission has revised the thresholds that determine whether companies are required to notify federal antitrust authorities about a transaction under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act. The new thresholds take effect February 25, 2016. As of that date, a transaction resulting in an acquiring person holding an aggregate total amount of voting securities and assets of the acquired party of $78.2 million or less (at the time of closing) does not need to be reported under the HSR Act. This is up from $76.3 million. Transactions resulting in excess of $312.6 million (up from $305.1 million) of ownership of assets or voting securities of an acquired person will have to be reported, unless otherwise exempted.

"Size of person" test.Transactions valued in excess of $78.2 million but at $312.6 million or less would still not be reportable unless they satisfy the so-called "size of person" test. This test will require one side of the transaction to have sales or assets in excess of $156.3 million and the other $15.6 million, as of February 25, 2016.

Filing Fees. While the filing fees are not adjusted for inflation, the filing fee thresholds are revised annually. As of February 25, 2016, a $45,000 filing fee is required for transactions valued at less than $156.3 million. Transactions valued at $156.3 million or greater but less than $781.5 million require a $125,000 fee. Transactions valued at $781.5 million or greater require a $280,000 fee.

Interlocking Directorates. The agency also revised the monetary thresholds that trigger a prohibition preventing companies from having interlocking memberships on their corporate boards of directors, pursuant to Section 8 of the Clayton Act. Those took effect on January 26, 2016.

Under the new thresholds, a person is prohibited from simultaneously serving as a director or officer in any two competing corporations where each of the corporations has capital, surplus, and undivided profits aggregating more than $31.841 million (Clayton Act, Sec. 8(a)(1)), but would not apply where the competitive sales of either corporation is less than $3,184,100 or less than 2% of its total sales or where the competitive sales of each corporation are less than 4% of its total sales (Clayton Act, Sec. 8(a)(2)(A)).

This entry was posted on Tuesday, January 26th, 2016 at 5:28 pm and is filed under Mergers and Acquisitions, Premerger Notification
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