

## Fines for HSR Violations Increase; Basic HSR Threshold Raised

## 2009-01-12

The Federal Trade Commission (FTC) has increased thresholds and penalties pertaining to the Hart-Scott-Rodino (HSR) pre-merger notification regime. The Commission also increased the thresholds for Section 8 of the Clayton Act.

## **Penalties for HSR Violations**

The maximum penalty for violations of the HSR Act--e.g., failures to notify reportable transactions or to produce 4(c) documents--will increase to \$16,000 per day from its current \$11,000 per day. This change will be effective February 9, 2009.

As background, the FTC examines every four years whether, based on change in the Consumer Price Index, a penalty increase is warranted. The adjustment is made under the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA). The relevant part of the FCPIAA requires that any increase be rounded to the nearest multiple of \$5,000.

## **HSR Thresholds and Section 8 Thresholds**

Effective February 12, 2009, the HSR reporting threshold will undergo its annual adjustment for change in the gross national product, raising the basic threshold (also known as the "\$50 million threshold") to \$65.2 million for 2009. At the same time, all of the notification and exemption dollar thresholds in the HSR statute, regulations, and reporting instructions that are subject to annual adjustments will also be adjusted. The new HSR dollar thresholds will be as follows:

Original Threshold	iginal Threshold Adjusted Threshold	The two dollar
Original rifeshold		thresholds for
\$10 million	\$10 million \$13.0 million	Section 8 of the
		Clayton Act have
\$50 million	\$65.2 million	also been adjusted
\$100 million \$130.3 million	¢120.2	to account for
	\$130.3 million	changes in the
\$110 million	\$143.4 million	gross national
+ <b></b>		product. Section 8,

\$200 million	\$260.7 million	in many
	\$651.7 million	circumstances,
\$500 million		forbids a person
\$1 billion	\$1.3034 billion	from serving as an
\$1 DIIIIOII		officer or director of

two competing corporations if two thresholds are met. Under the revised thresholds, effective January 12, 2009, Section 8 may apply when each of the competing corporations has capital, surplus, and undivided profits aggregating more than \$26,161,000, and each corporation's competitive sales are at least \$2,616,100.

Notably, if the gross national product decreases in the fiscal year ending September 30, 2009, as some economists predict, the thresholds will also adjust downward in February 2010.

Wilmer Cutler Pickering Hale and Dorr LLP is a Delaware limited liability partnership. WilmerHale principal law offices: 60 State Street, Boston, Massachusetts 02109, +1 617 526 6000; 2100 Pennsylvania Avenue, NW, Washington, DC 20037, +1 202 663 6000. Our United Kingdom office is operated under a separate Delaware limited liability partnership of solicitors and registered foreign lawyers authorized and regulated by the Solicitors Regulation Authority (SRA No. 287488). Our professional rules can be found at www.sra.org.uk/solicitors/code-of-conduct.page. A list of partners and their professional qualifications is available for inspection at our UK office. In Beijing, we are registered to operate as a Foreign Law Firm Representative Office. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. Prior results do not guarantee a similar outcome. © 2004-2024 Wilmer Cutler Pickering Hale and Dorr LLP