

ALERT



March 2008

Revised Hart-Scott-Rodino Act Thresholds

The Federal Trade Commission recently announced revisions to the Hart-Scott-Rodino (“HSR”) filing thresholds. The HSR Act requires annual adjustment of the jurisdictional thresholds based on the change in the U.S. gross national product.

Thresholds

Effective February 28, 2008, a Notification and Report Form must be filed when, as a result of an acquisition, the buyer will hold voting securities or assets valued in excess of \$63.1 million, if the transaction involves parties with net annual sales or total assets valued at more than \$12.6 million and \$126.2 million, respectively. If the value of the transaction exceeds \$252.3 million, the size of the parties is irrelevant and a Notification and Report Form must be submitted. The original and adjusted jurisdictional thresholds are summarized below.

	Original Threshold	Adjusted Threshold
Size of Transaction	\$50 million \$200 million	\$63.1 million \$252.3 million
Size of Person	\$10 million \$100 million	\$12.6 million \$126.2 million

Filing fees have not changed and apply to the new thresholds as follows:

Transaction Value	Filing Fee
> \$63.1 million and < \$126.2 million	\$45,000
> \$126.2 million and < \$630.8 million	\$125,000
> \$630.8 million	\$280,000

Recent Enforcement Action Highlights Importance of Strict Compliance

On October 15, 2007, Iconix Brand Group (“Iconix”) agreed to pay a civil penalty of \$550,000 to settle charges that it failed to provide certain required documents in its HSR premerger notification filing in connection with its \$204 million purchase of assets of Rocawear Licensing LLC (“Rocawear”). This case is the most recent in a long line of enforcement actions where the antitrust agencies have demanded strict compliance with the HSR filing requirements, even in cases where the transaction in question poses no threat to competition or consumers.

As part of the HSR filing, parties are required to submit certain documents prepared by or for officers or directors for the purpose of evaluating the transaction with respect to markets, market shares, competition, competitors, or the potential for sales growth or expansion into product or geographic markets. These documents typically are identified as Item 4(c) documents, a reference to the item number on the HSR form which requires their submission.

Neither Iconix nor Rocawear submitted any 4(c) documents with its HSR filing. Shortly after receipt of the filings, a Federal Trade Commission (FTC) staff member contacted Iconix and was assured that a thorough search had been conducted and that no 4(c) documents existed. Subsequent to this exchange, the FTC and the Department of Justice (DOJ) determined not to challenge the transaction and granted early termination of the HSR waiting period.

Nevertheless, the agencies remained suspicious of Iconix's representations regarding 4(c) documents and the DOJ opened an investigation into the matter. In response to the DOJ's Civil Investigative Demand, Iconix produced several documents that the agencies determined were responsive to Item 4(c) and should have been produced with the HSR filing.

This case is an important reminder that the absence of substantive antitrust concerns does not mean that the agencies will not demand strict compliance with the HSR filing requirements. Failure to comply with the HSR requirements, even in cases that do not raise competitive concerns, may have serious consequences. Parties should work closely with experienced HSR counsel to ensure compliance.

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