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FTC Increases Penalties for HSR Violations

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Antitrust/Competition

This morning, the Federal Trade Commission (“FTC”) announced a 150% increase in the maximum daily penalty for premerger notification violations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”), from \$16,000 to \$40,000.

As the FTC explains in the Federal Register notice regarding the change, this adjustment is the result of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which: “requires federal agencies to implement a ‘catch-up adjustment’ in 2016 to address inflation since the civil penalties within their jurisdiction were last set or adjusted by statute.”

Following this adjustment, the Act directs agencies to adjust their civil penalties for inflation each January.

As a general matter, those found liable for HSR Act violations are often not assessed the maximum possible penalty, absent especially egregious circumstances. The FTC’s Federal Register notice explains the factors that are taken into account when it or the Department of Justice determine an HSR Act fine, which include “the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.”

If you have any questions concerning the material discussed in this client advisory, please contact the following members of our Antitrust/Competition practice:

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