

Antitrust Alert: HSR and Other FTC Civil Penalties Increase

Adjusted Penalties Effective February 9, 2009

1/15/2009

The Federal Trade Commission (FTC) has authority to impose civil penalties for certain violations of the various statutes it administers. Effective February 9, 2009, those penalties will be increased as follows:

Statute	Violation	Penalty Increase
HSR Act	Premerger notification violations	From \$11,000 to \$16,000
Clayton Act	Cease-and-desist order violations ¹	From \$6,500 to \$7,500
FTC Act	Unfair or deceptive acts or practices ²	From \$11,000 to \$16,000
Energy Policy and Conservation Act	Recycled oil labeling violations ³	From \$6,500 to \$7,500
	Energy conservation violations ⁴	From \$11,000 to \$16,000
Fair Credit Reporting Act	Violations of the act ⁵	From \$2,500 to \$3,500

The FTC takes compliance with the various statutes under its jurisdiction seriously and does not hesitate to seek significant civil penalties from violators. It is important to recognize that these penalties are levied on a *per violation* basis (e.g., per day, per unit, per act, etc.), and thus the total fine can be quite substantial and can reach hundreds of thousands—if not millions—of dollars.

For example, pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR Act), parties engaged in certain mergers or acquisitions, when specified thresholds are met, are required to file a notification and report form and to observe a statutorily prescribed waiting period prior to closing. Any person who fails to comply with any provision of the HSR Act is liable for a civil penalty for *each day* during which such person is in violation. The FTC has imposed civil penalties as high as \$4 million⁶ for violations of the HSR Act. (Note that at the time that penalty was issued, the per day penalty amount was still \$11,000. Under the increased penalty of \$16,000 per day, that penalty could conceivably have been as high as \$5.8 million.)

The FTC is required to make these periodic adjustments to the civil penalties pursuant to the Federal Civil Penalties Inflation Act of 1990 based on increases in the Consumer Price Index.

Endnotes

¹ Under section 11(l).

² Under sections 5(l), 5(m)(1)(A), and 5(m)(1)(B).

³ Under section 525(a).

⁴ Under section 525(b).

⁵ Under section 621(a)(2).

⁶ *United States v. The Hearst Trust and The Hearst Corporation* (FTC File No. 991 0323).

Feel free to contact one of the attorneys listed below for further information. We would be pleased to assist you with any concerns you may have.

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