

FEDERAL TRADE COMMISSION**Hart-Scott-Rodino Act Antitrust Improvements Act of 1976 and Regulations Thereunder; Statement Concerning Hart-Scott-Rodino Filing Fees****AGENCY:** Federal Trade Commission.**ACTION:** Notice

SUMMARY: On November 21, 1989, President Bush signed into law the Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for Fiscal 1990. Section 605 of that statute, as enacted, requires the payment of a filing fee of \$20,000 by each person acquiring voting securities or assets who is required to file a premerger notification by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and regulations promulgated thereunder. The statute requires the Federal Trade Commission ("Commission") to assess and collect the filing fees five working days after its enactment and thereafter. The statute also specifies that no such notification shall be considered filed until the required fee has been paid. The Commission has issued this statement in order to advise the public about the filing fee obligation.

EFFECTIVE DATE: The filing fee requirement is effective as of November 29, 1989. Premerger notification and report forms received after 5 p.m. eastern time on November 28, 1989 will be deemed effected on November 29, 1989.

FOR FURTHER INFORMATION CONTACT:

John M. Sipple, Jr., Chief, Premerger Notification Office, Bureau of Competition (Sixth Street and Pennsylvania Avenue NW., Room 300), Federal Trade Commission, Washington, DC 20580, 202-326-2862.

SUPPLEMENTARY INFORMATION:**Statement of the Federal Trade Commission on Hart-Scott-Rodino Filing Fees**

On November 8, 1989, the United States Congress, as part of the Commerce, Justice, and State Appropriations Bill¹, mandated that a fee of \$20,000 must be paid by "persons acquiring voting securities or assets who are required to file premerger notifications by the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the regulations promulgated thereunder"

¹ Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill for the Fiscal Year Ending September 30, 1990 (H.R. 2991), section 605.

(the Act).² President Bush signed the Bill into law on November 21, 1989. The statute requires the Federal Trade Commission ("Commission") to assess and collect the filing fees five working days after its enactment and thereafter. The statute further specifies that "[f]or purposes of said Act, no notification shall be considered filed until payment of the fee required by this Section." In other words, as of November 29, 1989, the waiting period required under the Act will not begin until payment of a filing fee.

The Commission issues this statement in order to advise the public about the filing fee obligation, and to set out procedures for payment of the filing fee

I. Persons With a Fee Payment Obligation

The statute requires persons acquiring voting securities or assets who are required to file premerger notifications by the Act and the regulations³ promulgated thereunder to pay a filing fee. "Acquiring person" is defined, for purposes of the Act, in Rule 801.2.

In most transactions the Act and Rules specify only one acquiring person who is required to file a premerger notification, and who therefore is obligated by the statute to pay a filing fee. However, in some transactions more than one person is required under the Act and Rules to file a premerger notification. In these circumstances, each acquiring person required to file a premerger notification will be obligated by the statute to pay a filing fee. Some of the more common transactions in which this is likely to occur are set out below

For consolidations in which more than one person is an acquiring person required to file a premerger notification, each such person must separately pay a filing fee. (See Rule 801.2(d)).

Example 4. (1) Assume corporations A and B (each being its own ultimate parent entity) will be consolidated pursuant to an agreement in which a newly formed corporate entity, C, will be the surviving entity. The shareholders of A and B will receive newly issued shares of C as a result of the transaction. Under the Act and Rules A

² References to "the Act" refer to section 7A of the Clayton Act, 15 U.S.C. 18a, as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976. Pub. L. 95-435, 90 Stat. 1390.

³ References to "Regulations" and "Rules" in this statement refer to the Premerger Notification Rules, 16 CFR parts 801-803.

⁴ Throughout the examples, persons are designated ("A" "B" etc.) with quotation marks, and entities are designated (A, B, etc.) without quotation marks. Unless otherwise indicated, assume the size-of-person, size-of-transaction and commerce tests are satisfied.

and B are each an acquiring person required to file a premerger notification and pay a filing fee. Any shareholder of A or B who is also an acquiring person required to file a premerger notification under Rule 801.2(a) and (e) must also pay a filing fee.

To the extent the formation of a joint venture or other corporation is reportable pursuant to Rule 801.40, each acquiring person (contributor) required to file a premerger notification under the Act and Rules must pay a filing fee.

When an entity making an acquisition is controlled by more than one person (e.g., a joint bid is being made), each acquiring person required to file a premerger notification under the Act and Rules must pay a filing fee.

Example: (2) Assume corporation A has two ultimate parent entities, "X" and "Y" under Rule 801.1(c). "X" and "Y" will cause A to make a cash tender offer for B's outstanding voting securities. "X" and "Y" must each file a premerger notification and pay a filing fee.

A person acquiring voting securities in secondary acquisitions, separately reportable under Rule 801.4, shall pay a filing fee for each secondary acquisition for which it is required by the Act and Rules to file a premerger notification. This fee shall be in addition to any filing fee that is required in the primary acquisition.

When persons file documents and information with the Commission pursuant to section 7A(c)(6) and (8) of the Act and Rules 802.6(a) and 802.8 in order to obtain an exemption from the filing requirements of the Act, no filing fee is required.

II. Mechanics of Payment

Filing fees shall be paid in accordance with the procedures set forth below

(A) The filing fee requirement is effective as of November 29, 1989. Pursuant to Rule 803.10(c)(1) premerger notification and report forms received after 5 p.m. eastern time on November 28, 1989 are deemed effected on November 29, 1989. Premerger notification and report forms received prior to November 29, 1989, and which the Commission's Premerger Notification Office has certified in writing are complete (See part (I) below), are not affected by the filing fee requirement.

(B) Fees are due and payable at the time of filing premerger notification and report forms. Fees are payable to the "Federal Trade Commission", omitting the name or title of any official of the Commission, by electronic wire transfer, United States postal money order, bank money order, bank cashier's check or certified check in U.S. currency

(C) Fees paid by electronic wire transfer shall be deposited to the Treasury's account at the New York Federal Reserve Bank (the "Bank"). To insure fees paid are attributed to the proper acquiring person, the following information must be given at the time of transfer by the payor to the Bank:

1. Treasury's ABA number: 021030004
2. Commission's ALC number: 29000001
3. Commission's Clearing Account:
29X3875.2
4. The payor's name, the acquiring person's name (or a pseudonym if preferred), and an identification of the payment as a "Pre-Merger Filing Fee."

(D) Fees paid by United States postal money order, bank money order, bank cashier's check, or certified check shall be submitted to the Commission's Premerger Notification Office along with

the required premerger notification and report forms.

(E) A person required to pay a filing fee shall include in the letter of transmittal that accompanies its premerger notification and report forms a statement that a filing fee has been paid, the method of payment and, if payment was made by electronic wire transfer, the date of transfer and any pseudonym used to identify the acquiring person.

(F) Any filing that is not accompanied by payment of a filing fee is deficient. See Rule 803.10(c)(2). Payment of a filing fee does not preclude a determination that a filing is deficient for any other reason.

(G) Except as provided in this paragraph, no filing fee received by the Commission will be returned to the payor and no part of the filing fee shall

be refunded. However, if it is determined that premerger notification was not required by the Act and Rules, the filing fee shall be returned.

(H) Filing fees are to be paid solely to the Commission. No additional fee is required to be submitted to the Antitrust Division of the Department of Justice.

(I) In accordance with past policy, the Commission staff will send a letter to persons filing under the Act to verify the receipt of completed notification and report forms and to identify the expiration date of the waiting period. Such notice will henceforth acknowledge receipt of a filing fee.

By direction of the Commission.

Donald S. Clark,

Secretary

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