



FTC Announces Huge Increase in Fines for Rules, Orders and HSR Violations

The Federal Trade Commission yesterday announced a 150 percent increase in the maximum civil penalty for violations of the Hart-Scott-Rodino Act and FTC orders, from \$16,000 to \$40,000 per day. The FTC also increased maximum civil penalties for violations of 14 other statutes.¹ The FTC deems each day in which a party is not in compliance with its rules, orders or the HSR Act as a separate violation, meaning that fines can quickly amount to millions of dollars.² The new maximum fines will apply to civil penalties assessed after August 1, 2016, and will cover violations that *predate* the effective date. \$40,000 per day will be the maximum civil penalty for HSR Act and FTC order violations, although the FTC will continue to consider on a case-by-case basis whether the fine imposed should be lower.³

The last civil penalty increase for HSR Act and FTC order violations was over seven years ago, when the fine was increased from \$11,000 to \$16,000 per day. The substantial increase announced yesterday is a result of 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act, which require federal agencies to implement a “catch-up adjustment” to address inflation since the civil penalties within their jurisdiction were set by statute. The civil penalties for violating FTC orders and the HSR Act were established by statute in 1973 and 1976, respectively, at \$10,000, and the new penalties were calculated by adjusting for over 40 years of inflation since the statutes’ inception. The FTC also announced that the maximum penalty amount will now be adjusted annually for inflation each January, similar to the annual adjustments to the HSR filing thresholds.

Under the HSR Act, most acquisitions valued in excess of \$78.2 million must be notified to the FTC and the Department of Justice prior to closing. In addition, the FTC’s antitrust and consumer protection actions are often resolved with orders that impose obligations on the parties. Yesterday’s announcement raises the stakes for compliance with the HSR Act and other FTC rules and orders. It serves as a strong reminder to ensure that your compliance policies and practices are current and effective.

¹ The complete list is available in the [Federal Register Notice for Adjustment of Civil Monetary Penalty Amounts](#).

² For example, on April 4, 2016, the DOJ filed a lawsuit seeking a \$19 million fine against ValueAct Capital for allegedly failing to comply with the HSR Act in connection with its investments in Halliburton and Baker Hughes. In 2012, Google agreed to pay \$22.5 million for violating an earlier privacy settlement with the FTC.

³ Courts traditionally have looked at six factors when determining the appropriate civil penalty: (1) harm to the public; (2) benefit to the violator; (3) good or bad faith of the violator; (4) the violator’s ability to pay; (5) deterrence of future violations; and (6) vindication of the FTC’s authority. See [United States v. Boston Scientific Corp.](#), 253 F. Supp. 2d 85, 98 (D. Mass. 2003).

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