

# ANTITRUST ALERT

## FTC ANNOUNCES REVISED HART-SCOTT-RODINO THRESHOLDS

### MINIMUM SIZE OF TRANSACTION TEST INCREASED TO \$65.2 MILLION

The Federal Trade Commission (FTC) announced on January 6, 2009, the latest annual revision to the size thresholds governing premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, Section 7A of the Clayton Act, 15 U.S.C. § 18a (the “HSR Act”). The HSR Act requires parties to transactions meeting certain size and other tests to file premerger notification forms with both the FTC and the Department of Justice Antitrust Division and observe a mandatory waiting period prior to closing. The size threshold changes will be effective 30 days after formal notice is published in the *Federal Register*, said publication anticipated for later this week.

#### Revised HSR Premerger Notification Thresholds<sup>1</sup>

##### *The Size-of-Transaction Threshold*

The revised thresholds increase the minimum transaction size test from \$63.1 million to \$65.2 million (an approximate 3.3 percent increase). Thus, under the revised thresholds, HSR Act filings will only be required (unless otherwise exempted) for a transaction that results in the acquiring person holding more than \$65.2 million of the acquired person’s voting securities or assets.

##### *The Size-of-Person Threshold*

The size-of-person thresholds have increased by a similar percentage amount. While the HSR size-of-person rules are complex, no HSR Act filing is generally required for transactions valued at more than \$65.2 million but less than \$260.7 million, unless one party to the

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<sup>1</sup> In addition to the specific thresholds referenced in this alert, the FTC is also increasing, by comparable percentages, certain other thresholds in the rules, including those relating to the particular voting securities value level for which a filing is made and the minimum U.S. contact thresholds required for reportability of acquisitions of foreign assets and voting securities. However, the thresholds relating to acquisitions of carbon and mineral reserves remain unchanged.

transaction has \$130.3 million in annual net sales or total assets *and* the other party has \$13.0 million in net sales or total assets. Any transaction that is valued at more than \$260.7 million will be reportable under the HSR Act (unless otherwise exempted) without application of the size-of-person test.

*HSR Filing Fee Thresholds*

The FTC has also adjusted the tiered filing fee structure to accord with the adjustments to the jurisdictional thresholds. The revised filing fees are as follows—

<b>Value of Transaction</b>	<b>Filing Fee</b>
Less than \$130.3 million	\$45,000
\$130.3 million to less than \$651.7 million	\$125,000
\$651.7 million or more	\$280,000

Parties contemplating merger or acquisition activity are strongly encouraged to consult antitrust counsel to determine whether premerger notification is required. The rules governing the calculation of the relevant filing thresholds and the applicability of particular exemptions to all or part of a transaction are very complex. Moreover, persons who fail to file when required to do so face potential civil penalties of up to \$11,000 per day.

**CONTACT INFORMATION**

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