

Antitrust Alert

FTC Revises Hart-Scott-Rodino Thresholds; Minimum Size of Transaction Test Increases to \$66 Million

January 24, 2011

On January 21, 2011, the Federal Trade Commission (FTC) announced 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*.

REVISED HSR PREMERGER NOTIFICATION THRESHOLDS¹

The Size-of-Transaction Threshold

After declining last year for the first time in HSR Act history, the filing thresholds have once again increased. The minimum transaction size test has increased from \$63.4 million to \$66 million (an approximate 4.1 percent increase). Thus, under the revised thresholds, HSR Act filings will be required (unless otherwise exempted) for a transaction that results in the acquiring person holding more than \$66 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 \$66 million but less than \$263.8 million, unless one party to the transaction has \$131.9 million in annual net sales or total assets and the other party has \$13.2 million in net sales or total assets. Any transaction that is valued at more than \$263.8 million will be reportable under the HSR Act (unless otherwise exempted) without application of the size-of-person test.

¹ In addition to revised Hart-Scott-Rodino thresholds, the FTC announced revisions to the thresholds prohibiting companies from having interlocking directorates under Section 8 of the Clayton Act. The new thresholds are \$26,867,000 for Section 8(a)(1) and \$2,686,700 for Section 8(a)(2)(A). The revised thresholds will apply to transactions that close on or after the effective date of the notice, which is 30 days after it is published in the *Federal Register*.



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—

| Value of Transaction (\$ millions) | Filing Fee |
|--------------------------------------|------------|
| More than \$66 but less than \$131.9 | \$45,000 |
| \$131.9 to less than \$659.5 | \$125,000 |
| \$659.5 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 \$16,000 per day.

CONTACT INFORMATION

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