

Antitrust Alert

January 11, 2013

FTC Revises Hart-Scott-Rodino Thresholds; Minimum Size of Transaction Test Increases to \$70.9 Million

On January 10, 2013, 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 ("HSR Act").¹ 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 new thresholds will apply to transactions consummated on or after the effective date, which is 30 days following publication of formal notice in the *Federal Register*.

Revised HSR Premerger Notification Thresholds²

The Size-of-Transaction Threshold

The minimum transaction size test has increased from \$68.2 million to \$70.9 million (an approximate 4 percent increase). Thus, under the revised thresholds, HSR Act filings may be required (unless otherwise exempted) for a transaction that results in the acquiring person holding more than \$70.9 million of the acquired person's voting securities or assets.³

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, under the new thresholds no HSR Act filing will generally be required for transactions valued at more than \$70.9 million but less than \$283.6 million, unless one party to the transaction has \$141.8 million or more in annual net sales or total assets, and the other party has \$14.2 million or more in annual net sales or total assets. The potential exemption afforded by the size-of-person test will be inapplicable to transactions valued at more than \$283.6 million.

¹ See "FTC Announces Revised Thresholds for Clayton Act Antitrust Reviews," available at <http://www.ftc.gov/opa/2013/01/clayton.shtm>.

² In addition to the size thresholds highlighted in this alert, most other HSR thresholds (for example, relating to various exemptions) have increased as well. See <http://www.ftc.gov/os/2013/01/130110claytonact7afn.pdf>. On January 10, 2013, the FTC also announced the annual revisions to the interlocking directorate thresholds under Section 8 of the Clayton Act. The new thresholds are \$28,883,000 for Section 8(a)(1) and \$2,888,300 for Section 8(a)(2)(A).

³ Where interests in an LLC or partnership are to be acquired, filings may be required (unless otherwise exempted) where the value of the acquired interests exceeds \$70.9 million and, as a result of the acquisition, the acquiring person will hold 50 percent or more of the target entity's economic interests (measured based on the higher of percentage right to profits or percentage right to assets in the event of dissolution).

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 fee thresholds are as follows:

<u>Value of Transaction (\$ millions)</u>	<u>Filing Fee</u>
More than \$70.9 but less than \$141.8	\$ 45,000
\$141.8 to less than \$709.1	\$125,000
\$709.1 or more	\$280,000

Parties contemplating M&A 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.

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