

January 30, 2012

Hart-Scott-Rodino Act: Annual Jurisdictional Thresholds Revisions

The Federal Trade Commission (FTC) recently announced its annual revisions to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) jurisdictional thresholds. The revised thresholds will become effective 30 days after publication in the Federal Register and will apply to all transactions closing on or after such date. The new thresholds will remain in effect until the next annual adjustment, expected in the first quarter of 2013.

Applicable Transactions

A premerger notification filing under the HSR Act is required in connection with certain mergers and acquisitions of voting securities or assets that meet specified thresholds and are not otherwise exempt. The premerger notification filing requirement under the HSR Act will also apply to the acquisition of interests in unincorporated entities (e.g., partnerships and limited liability companies) if the thresholds are met and there is no available exemption, but only if the acquiring persons will control the entity. An exemption may be applicable depending on the type of business and the assets involved as well as the nature of the buyer under certain circumstances.

“Size of Transaction” Threshold

Under the new thresholds, the minimum transaction threshold has increased from \$66 million to \$68.2 million.

“Size of Person” Threshold

For transactions valued at or below \$272.8 million, the “Size of Person” test must also be met for the transaction to be reportable. With the new thresholds, the “Size of Person” test will be met if one person (either acquiring or acquired) has annual net sales or total assets equal to or exceeding \$13.6 million, and the other person has annual net sales or total assets equal to or exceeding \$136.4 million. For purposes of the “Size of Person” test, annual net sales and total assets are determined based on the person’s most recent regularly prepared financial statements.

Filing Fees

The filing fees have remained the same but the thresholds have increased.

For transactions valued:

- Above \$68.2 million and below \$136.4 million, the fee will be \$45,000.
- At or above \$136.4 million and below \$682.1 million, the fee will be \$125,000.
- At or above \$682.1 million, the fee will be \$280,000.

Before closing transactions with values near the reporting threshold, it is important to determine whether a premerger notification filing must be made. The rules governing computation of thresholds, transaction valuation and the applicability of exemptions are complex. We would be pleased to assist with your analysis and any required filing.

For more information, please contact:

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