

FTC Raises Hart-Scott-Rodino Thresholds

As of the effective date (on or about February 23, 2012) transactions must be valued in excess of \$68.2 million to be subject to the preclosing notification requirements of the Hart-Scott-Rodino Act.

January 24, 2012

The Federal Trade Commission (FTC) has announced that it will raise the Hart-Scott-Rodino Act (HSR Act) jurisdictional and filing fee thresholds. Any transaction closing as of February 23, 2012 (or, if different, the effective date, which may be a few days after February 23, 2012) will be subject to the revised thresholds. The new rules include an increase in the “size of transaction” test from greater than \$66 million to greater than \$68.2 million—which means that under the new threshold, acquisitions valued for HSR Act purposes at \$68.2 million or less will not require preclosing filing and approval.

New Jurisdictional Thresholds

As a general rule, the HSR Act requires both Acquiring and Acquired Persons (as defined in the HSR Act) to file notifications if the following *post-adjustment* jurisdictional thresholds are met:

1. One person has net sales or total assets of at least \$13.6 million.
2. The other person has net sales or total assets of at least \$136.4 million.
3. As a result of the transaction, the Acquiring Person will hold an aggregate amount of stock and assets of the Acquired Person valued at more than \$68.2 million.

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4. As a result of the transaction, the Acquiring Person will hold an aggregate amount of stock and assets of the Acquired Person valued at more than \$272.8 million, regardless of the sales or assets of the Acquiring and Acquired Persons.

Conditions 1 and 2 are generally referred to as the “size of person” test, while conditions 3 and 4 are commonly described as the “size of transaction” test.

The HSR Act rules relating to acquisitions of partnership interests and membership interests in a limited liability company (LLC) remain the same. Only acquisitions of economic control in an LLC or partnership may be reportable. “Control” is defined as having a right to 50% or more of the profits of a partnership or LLC or 50% or more of the assets upon the dissolution of such entity.

New Filing Fee Thresholds

Filing fees are also determined by a threshold test relating to the size of the transaction. While the valuation thresholds have changed, the fees themselves have not been adjusted:

Valuation of Transaction	Filing Fee
in excess of \$68.2 million or greater, but less than \$136.4 million	\$45,000
\$136.4 million or greater, but less than \$682.1 million	\$125,000
\$682.1 million and greater	\$280,000

The figures above represent the new “as adjusted” threshold figures. The table below illustrates the changes.

Current Threshold (in millions)	“As Adjusted” Threshold (in millions)
\$13.2	\$13.6
\$66	\$68.2
\$131.9	\$136.4
\$263.8	\$272.8
\$659.5	\$682.1

These changes are being implemented pursuant to the 2000 amendments to Section 7A of the Clayton Act. Section 7A(a)(2) of the Clayton Act requires the FTC to revise the jurisdictional thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). The revised thresholds will apply to all transactions that close on or after the effective date.

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