

Antitrust Alert: FTC Announces Decreased HSR Thresholds

1/20/2010

Size of Transaction Test Lowered to \$63.4 Million

For the first time since the enactment of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act), the Federal Trade Commission (FTC) announced on January 19, 2010 that it will *decrease* the jurisdictional thresholds applicable under the HSR Act. The FTC revises the thresholds annually, based on changes in the gross national product. The new thresholds will be effective 30 days after their publication in the Federal Register. The decrease will result in more reportable transactions under the HSR Act.

The HSR Act requires parties engaged in certain mergers or acquisitions to file a notification and report form with the FTC and the Antitrust Division of the Department of Justice (DOJ), and to observe the statutorily prescribed waiting period (usually 30 days) prior to closing, if the parties meet the jurisdictional thresholds (absent any applicable exemptions).

New Thresholds¹

Under the new jurisdictional thresholds, a transaction will be reportable if:

Size of Transaction Test	The acquiring person will hold, as a result of the transaction, an aggregate total amount of voting securities or assets of the acquired person valued in excess of \$253.7 million . <i>or</i> The acquiring person will hold, as a result of the transaction, an aggregate total amount of voting securities or assets of the acquired person valued in excess of \$63.4 million , and the Size of Person thresholds below are met.
Size of Person Test	Either the acquiring or the acquired person has at least \$12.7 million in assets or sales, and the other person has at least \$126.9 million in assets or sales.

Filing Fees

Filing fees for the premerger notification remain unchanged, but the FTC has revised the thresholds used to determine the filing fees. Under the revised thresholds, the filing fees are as follows:

Filing Fee	New Filing Fee Thresholds
\$45,000	For acquisitions valued at \$63.4 million or more up to \$126.9 million.
\$125,000	For acquisition valued at \$126.9 million or more up to \$634.4 million.
\$280,000	For acquisition valued at \$634.4 million or more.

Feel free to contact any of the attorneys listed at left for further information on this or any HSR-related question. We would be pleased to assist you with any concerns you may have.

Endnotes

¹The old thresholds required a premerger notification filing for the acquisition of securities or assets valued at \$65.2 million or more, if either the acquiring or the acquired party had at least \$13 million in assets or sales, and the other party had at least \$130.3 million in assets or sales. The Size of Person test was not required if the value of the securities or assets acquired was at least \$260.7 million.

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For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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