

WSGR ALERT

FEBRUARY 2012

FEDERAL TRADE COMMISSION REVISES HART-SCOTT-RODINO THRESHOLDS

As it does every year at this time, the Federal Trade Commission (FTC) has issued revised Hart-Scott-Rodino Act (HSR) jurisdictional thresholds for the upcoming year. The FTC is required by law to revise the filing thresholds based upon changes in the gross national product. The new thresholds will become **effective on February 27, 2012**, for transactions closing on or after that date.

Under the HSR Act, 15 U.S.C. §18a, transactions that exceed "size-of-transaction" and (in most cases) "size-of-person" thresholds must be reported to the FTC and the Department of Justice before they may be consummated (unless an exemption applies). The size of transaction is determined by the value of voting securities or assets to be held by the acquiring person as a result of an acquisition. The size-of-person test looks to the size of both the acquiring and acquired persons, and is determined by their respective gross assets or net revenues. Unless the transaction value is above \$272.8 million (see below), the size-of-transaction and size-of-person thresholds must both be met for the transaction to be subject to HSR.

- The new "**size-of-transaction**" threshold will be greater than **\$68.2 million** (up from \$66 million).
- The new "**size-of-person**" thresholds will be **\$136.4 million** in total assets or net revenues (up from \$131.9 million) for one person (acquiring or acquired), and **\$13.6 million** in total assets or net revenues for the other person (up from \$13.2 million).
- If the **transaction value exceeds \$272.8 million** (up from \$263.8 million),

the **size-of-person threshold no longer applies**, and a transaction is subject to HSR solely on the basis of the value of voting securities or assets to be acquired.

HSR filings are required not only for initial purchases of assets or voting securities valued in excess of \$68.2 million (per these revisions), but also for subsequent purchases that exceed incremental size-of-transaction thresholds. Thus, new HSR filings may be required for purchases that cross these higher, incremental thresholds, even if an HSR filing was made for previous purchases crossing a lower threshold. The FTC also adjusted these **incremental size-of-transaction thresholds** as follows:

- **\$136.4 million** (up from \$131.9 million)
- **\$682.1 million** (up from \$659.5 million)
- 25 percent of voting securities if the 25 percent is valued at more than **\$1,364.1 million** (up from \$1,319 million)

Please note that if an acquiring person holds 50 percent of the voting securities of an issuer (having observed the applicable HSR-notification and waiting-period requirements for the purchases resulting in the 50 percent holding), any additional purchases are exempt, regardless of the transaction value of the additional purchases.

Finally, the new size-of-transaction thresholds also affect the points at which HSR's tiered **filing fees** apply:

- Transaction values less than \$136.4 million: \$45,000

- Higher transaction values less than \$682.1 million: \$125,000
- Transaction values equal to or more than \$682.1 million: \$280,000

If you have any questions about these rule changes or HSR in general, please feel free to contact Charles Biggio (212-497-7780), Scott Sher (202-973-8822), or another member of Wilson Sonsini Goodrich & Rosati's antitrust practice.



Wilson Sonsini Goodrich & Rosati
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650 Page Mill Road
Palo Alto, CA 94304-1050
Tel: (650) 493-9300 Fax: (650) 493-6811
email: wsgr_resource@wsgr.com

www.wsgr.com

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