

Hart-Scott-Rodino Thresholds Adjusted

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Winstead News Alert

The Federal Trade Commission (the "FTC") recently adjusted the pre-merger notification filing thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The revised jurisdictional and filing fee thresholds become effective February 24, 2011. The adjustments to the thresholds are based on changes in the U.S. gross national product.

The HSR Act generally requires all parties contemplating mergers, acquisitions of voting securities or acquisitions of assets which meet or exceed the size-of-transaction and size-of-person thresholds in the Act to file a notification form with the FTC and the Department of Justice and observe a waiting period before consummating the transaction. Even when the size-of-transaction and size-of-person tests are met, the transaction may qualify for an exemption from reporting.

The most notable aspects of the revised thresholds are as follows:

1. The base filing threshold increased from \$63.4 million to \$66.0 million;
2. The "size of transaction" threshold, which captures all transactions over a certain value regardless of the size of parties, increased to \$263.8 million;
3. The "size of person" test (applicable to transactions now valued between \$66.0 million and \$263.8 million) will generally be met if one party in the transaction has assets or annual sales totaling \$131.9 million (previously \$126.9 million) or more and the other party has assets or annual sales of at least \$13.2 million (previously \$12.7 million); and
4. The threshold for the "foreign issuer/foreign asset" exemption was increased to \$66.0 million.

While the dollar amount of the filing fees payable to the FTC with HSR Act filings are not adjusted, the thresholds applicable to the statutory filing fees were adjusted. As of the effective date of the new thresholds, the schedule for filing fees will be as follows:

Size of Transaction	Filing Fee
Greater than \$66.0 million but less than \$131.9 million	\$45,000
\$131.9 million or greater but less than \$659.5 million	\$125,000
\$659.5 million or more	\$280,000

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