

# Hart-Scott-Rodino Thresholds Lowered for First Time

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## Winstead News Alert

In an historic first, the Federal Trade Commission (the "FTC") recently lowered 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 became effective February 22, 2010. In 2000, the HSR Act was amended to require adjustments to the thresholds based on changes in the U.S. gross national product. This is the first time the thresholds have been adjusted downward. In most cases, the adjusted thresholds were lowered to just slightly more than the 2008 levels.

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 decreased from \$65.2 million to \$63.4 million;
2. The "size of transaction" threshold, which captures all transactions over a certain value regardless of the size of parties, decreased to \$253.7 million;
3. The "size of person" test (applicable to transactions now valued between \$63.4 million and \$253.7 million) will be met if one party in the transaction has assets or annual sales totaling \$126.9 million (previously \$130.3 million) or more and the other party has assets or annual sales of at least \$12.7 million (previously \$13 million); and
4. The threshold for the "foreign issuer/foreign asset" exemption was lowered to \$63.4 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 \$63.4 million but less than \$126.9 million	\$45,000
\$126.9 million or greater but less than \$634.4 million	\$125,000
\$634.4 million or more	\$280,000

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