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FTC Announces 2011 HSR Act Reporting Thresholds

Kelly Karapetyan

The Federal Trade Commission has revised and, after a one-year decrease, once again raised the thresholds for the Hart-Scott-Rodino Antitrust Improvements Act. The HSR Act requires that parties to proposed stock or asset acquisitions exceeding certain thresholds file premerger notification reports to the FTC and the Antitrust Division of the U.S. Department of Justice and then observe statutorily prescribed waiting periods (usually 30 days) prior to closing the transaction. The new thresholds were published in the Federal Register on January 25, 2011 and will go into effect on February 24, 2011.

The FTC is required to revise the filing thresholds annually, based on the change in the gross national product.

HSR Filing Thresholds

The primary revisions to the thresholds are increases in the “size of transaction” and “size-of-person” tests under the HSR Act and Rules.

Size of transaction*	Reportability																		
Up to and including \$66.0 million	Not reportable																		
Above \$66.0 million up to and including \$263.8 million	Reportable <i>if</i> : (1) the transaction satisfies the “size of person” test, and (2) no exemption applies																		
	Size of person test																		
	<table border="0"> <tr> <td style="text-align: center;">Acquiring person</td> <td style="text-align: center;"><i>and</i></td> <td style="text-align: center;">Acquired person</td> </tr> <tr> <td>\$131.9 million (in total assets or annual net sales)</td> <td></td> <td>\$13.2 million (in total assets or annual net sales of a person engaged in manufacturing)</td> </tr> <tr> <td style="text-align: center;"><i>or</i></td> <td></td> <td></td> </tr> <tr> <td>\$131.9 million (in total assets or annual net sales)</td> <td style="text-align: center;"><i>and</i></td> <td>\$13.2 million (in total assets of a person not engaged in manufacturing)</td> </tr> <tr> <td style="text-align: center;"><i>or</i></td> <td></td> <td></td> </tr> <tr> <td>\$13.2 million (in total assets or annual net sales)</td> <td style="text-align: center;"><i>and</i></td> <td>\$131.2 million (in total assets or annual net sales)</td> </tr> </table>	Acquiring person	<i>and</i>	Acquired person	\$131.9 million (in total assets or annual net sales)		\$13.2 million (in total assets or annual net sales of a person engaged in manufacturing)	<i>or</i>			\$131.9 million (in total assets or annual net sales)	<i>and</i>	\$13.2 million (in total assets of a person not engaged in manufacturing)	<i>or</i>			\$13.2 million (in total assets or annual net sales)	<i>and</i>	\$131.2 million (in total assets or annual net sales)
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In excess of \$263.8 million	Reportable absent an exemption																		

* Based on the value of voting securities and assets the acquiring person will hold as a result of the acquisition, including the value of any previously acquired voting securities.



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HSR Notification Thresholds

The revisions also will increase notification thresholds for acquisitions of additional voting securities from the same party. As a result, notifications will be required at each of the following thresholds:

Notification thresholds
\$66.0 million
\$131.9 million
\$659.5 million
25% of the voting securities <i>if</i> their value exceeds \$1,319.0 million
50% of the voting securities <i>if</i> their value exceeds \$66.0 million

HSR Filing Fee

Filing fees remain the same, but the thresholds that determine the fees have been revised.

Value of Transaction	Filing Fee
≤ \$66.0 million	No filing required
> \$66.0 million but < \$131.9 million	\$45,000
≥ \$131.9 million but < \$659.5 million	\$125,000
≥ \$659.5 million	\$280,000

The text of the Federal Register notice, including all of the new thresholds, is available at <http://www.ftc.gov/os/fedreg/2011/01/110121clayton7afn.pdf>.

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