

2011 Revised (Higher) Hart-Scott-Rodino Act Thresholds

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The annual revised jurisdictional and filing fee thresholds under the Hart - Scott - Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), have been announced by the Federal Trade Commission (the "FTC"). Due to an increase in gross national product over the past government fiscal year, the new thresholds have also increased. The increased thresholds will become effective on February 24, 2011, and will apply to all covered transactions that close on or after that date.

The Hart-Scott-Rodino Antitrust Improvements Act Of 1976

The HSR Act provides that, where certain jurisdictional thresholds are met, parties intending to merge or make acquisitions must (absent any applicable exemptions) furnish the Premerger Notification Office of the FTC and the Antitrust Division of the Department of Justice with prescribed information regarding their respective businesses and the proposed transaction, and wait a specified period of time before consummating the transaction. The statutory "waiting period" stays consummation of the transaction for a minimum of 30 days (15 days in the case of bankruptcy or cash tender offers), absent a grant of early termination.

Revised Thresholds

The 2000 amendments to Section 7A of the Clayton Act mandate annual adjustments of the HSR Act thresholds for each fiscal year, that are based on changes in the gross national product. The revised jurisdictional and filing fee thresholds for this year increase the dollar amount limits for the size of transaction and the size of person at which parties to a transaction are required to make an HSR filing, as well as the filing fee thresholds. Many of the other filing requirements related to dollar amounts in the HSR Act have similarly been increased to remain consistent with the revised jurisdictional and filing fee thresholds.

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New Jurisdictional Thresholds

Under The New Jurisdictional Thresholds, A Transaction Will Be Reportable If:		Old Thresholds
Size of Transaction Test	The Acquiring Person will hold, as a result of the transaction, an aggregate total amount of voting securities, assets and/or interests in non - corporate entities of the Acquired Person valued at in excess of \$66 million ; AND	\$63.4 million
Size of Person Test	The Acquiring Person or the Acquired Person has annual net sales or total assets of \$131.9 million or more, and the other person has annual net sales or total assets of \$13.2 million or more; or	\$126.9 million \$12.7 million
	Transactions that are greater than \$263.8 million are reportable, regardless of the size of person test above.	\$253.7 million

New Filing Fee Thresholds

Filing Fee	The New Filing Fee Thresholds Are As Follows:	Old Thresholds
\$45,000	If the aggregate amount of voting securities, assets and/or interests in noncorporate entities to be held as a result of the transaction is greater than \$66 million but less than \$131.9 million .	\$63.4 million \$126.9 million
\$125,000	If the aggregate amount of voting securities, assets and/or interests in noncorporate entities to be held as a result of the transaction is equal to or greater than \$131.9 million but less than \$659.5 million .	\$126.9 million \$634.4 million
\$280,000	If the aggregate amount of voting securities, assets and/or interests in noncorporate entities to be held as a result of the transaction is equal to or greater than \$659.5 million .	\$634.4 million

Subsequent Acquisitions of Voting Securities

The FTC also adjusted the HSR Act thresholds for subsequent acquisitions of voting securities. For determining reporting thresholds, acquisitions of voting securities are viewed by the FTC on a cumulative basis. Subsequent acquisitions, when added to prior acquisitions, ordinarily must meet or exceed a higher threshold before reporting obligations are triggered.

As Now Revised, The New Notification Thresholds Are:	Old Thresholds
Voting securities valued at \$131.9 million or more;	\$126.9 million
Voting securities valued at \$659.5 million or more;	\$634.4 million
Voting securities constituting 25% of the issuer’s securities if valued at more than \$1,319.0 million ; and	\$1,268.7 million
Voting securities constituting 50% of the issuer’s securities if valued at more than \$66 million .	\$63.4 million

Section 7(A)(g)(1) of the Clayton Act, 15 U.S.C.

§ 18(a)(g)(1), provides that any person, or any officer, director or partner thereof, who fails to comply with any provision of the HSR Act is liable for a civil penalty for each day during which such person is in violation. The maximum amount of civil penalty is \$16,000 per day.

The FTC (the agency responsible for administering the HSR Act) has often stated that it takes compliance with the HSR premerger notification requirements seriously, that it will not hesitate to seek significant civil penalties from violators, and indeed it has backed this up in recent years with enforcement actions against a variety of defendants (including both companies and individuals). It is therefore important that all parties to a merger, acquisition or joint venture follow adequate measures to ensure compliance with the HSR Act.



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