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Increased Hart-Scott-Rodino Act Thresholds

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The Federal Trade Commission recently announced increased jurisdictional and filing fee thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), effective March 2, 2005. The new thresholds are mandated by the 2000 amendments to the HSR Act, which require annual adjustments to the thresholds for each fiscal year beginning after September 30, 2004 based on changes in the gross national product.

The adjustments change the dollar amounts of the jurisdictional thresholds at which parties to a transaction are required to make an HSR filing, as well as the filing fee thresholds. Many of the other dollar amounts in the HSR Act have similarly been adjusted to remain consistent with the revised jurisdictional and filing fee thresholds.

Jurisdictional Thresholds

Under the new thresholds, a transaction will be reportable if:

- The acquiring person will hold an aggregate total amount of voting securities and/or assets of the acquired person in excess of \$53.1 million (the size of transaction test); and
- The acquiring person or the acquired person has annual net sales or total assets of \$10.7 million or more, and the other person has annual net sales or total assets of \$106.2 million or more (i.e., the "size of person test"). This "size of person" test applies to transactions between \$53.1 million and \$212.3 million. Transactions that are greater than \$212.3 million are reportable, regardless of the "size of person" test.

Filing Fee Thresholds

The filing fees applicable to the new thresholds are as follows:

- \$45,000 filing fee if the aggregate amount of assets and/or voting securities to be held as a result of the transaction is greater than \$53.1 million but less than \$106.2 million;
- \$125,000 filing fee if the aggregate amount of assets and/or voting securities to be held as a result of the transaction is equal to or greater than \$106.2 million but less than \$530.7 million; and
- \$280,000 filing fee if the aggregate amount of assets and/or voting securities to be held as a result of the transaction is equal to or greater than \$530.7 million.

Other Threshold Increases

Although not required by the 2000 amendments, the FTC adjusted additional HSR Act dollar thresholds to remain consistent with the revised jurisdictional and filing fee thresholds, including:

Subsequent Acquisitions of Voting Securities. For determining reporting thresholds, acquisitions of voting securities are viewed by the FTC on a cumulative basis. Thus, every subsequent acquisition from the issuer beyond the initial threshold is potentially reportable under the HSR Act. To eliminate unnecessary reporting, however, the FTC established four higher notification thresholds for subsequent acquisitions of voting securities. Subsequent acquisitions, when added to prior acquisitions, must meet or exceed a higher threshold before reporting obligations are triggered. As now revised, the higher notification thresholds are:

- Voting securities valued at \$106.2 million or more;
- Voting securities valued at \$530.7 million or more;
- Voting securities constituting 25% of the

issuer's securities if valued at more than \$1.061 billion; and

- Voting securities constituting 50% of the issuer's securities if valued at greater than \$53.1 million.

Joint Ventures. The formation of a joint venture may be considered an acquisition under the HSR Act, and accordingly may require an HSR filing. Effective March 2, 2005, the formation of a joint venture may be reportable if the value of the transaction exceeds \$53.1 million and the parties exceed the \$10.7 million and \$106.2 million "size of person" tests. If the value of the transaction exceeds \$212.3 million, the "size of person" test becomes irrelevant.

Parties involved in a proposed transaction should consult one of the following members of our Mergers & Acquisitions or Antitrust Groups to determine how these changes apply to their individual situation:

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Foreign Assets and Voting Securities of a Foreign Issuer.

The dollar thresholds for acquiring foreign assets and voting securities of a foreign issuer have also been adjusted. Under the new thresholds, the acquisition of assets located outside the United States will be exempt from the requirements of the HSR Act if the foreign assets being acquired generated sales in or into the U.S. of \$53.1 million or less during the acquired person's most recent fiscal year. Similarly, the thresholds governing the acquisition of voting securities of a foreign issuer have been increased to \$53.1 million.

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