

Client Alert

A report
for clients
and friends
of the firm **January 2007**

Revised Hart-Scott-Rodino Jurisdictional Thresholds

Effective February 21, 2007, the notification thresholds for acquisitions of stock or assets under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 USC §18a (2001) (the "HSR Act" or the "Act"), will be increased. The increases, which occur annually, are a product of the indexing of the HSR Act's thresholds required by the 2000 amendments to the Act.

As a result of the 2007 revisions to the HSR Act's jurisdictional thresholds, published in the Federal Register on January 22, 2007,¹ the basic notification threshold for all transactions will be increased from \$56.7 million to \$59.8 million.

Unless otherwise exempt, an entity that is not controlled by any other entity or individual (a "Person") that, as a result of an acquisition, will hold voting securities, assets, or interests in an unincorporated entity of any other Person valued in excess of the HSR Act's jurisdictional threshold may be required to file notification under the Act and to observe the applicable waiting period before consummating the transaction.

Transactions valued at \$239.2 million or less (\$226.8 million prior to February 21, 2007) are not subject to the HSR Act unless the parties also meet the size-of-person threshold. Under the revised thresholds, the size-of-person test will generally be met where a person with annual net sales or total assets of \$119.6

million acquires a person with annual net sales or total assets of \$12 million, or vice-versa.

In each instance where an acquiring person files under the Act, the acquired person also is required to submit a filing. The purpose of the HSR filing is to enable antitrust regulators to review the transaction and investigate and address potential antitrust violations prior to its consummation.

Subsequent Notification Thresholds

The language of the HSR Act requires reporting whenever, as a result of an acquisition, an acquiring person would hold stock or assets of the acquired person valued in excess of the Act's jurisdictional threshold. This requirement, if applied literally, would create a filing obligation each time, for instance, an investor acquired additional shares of a target company if the value of the investor's holdings in the target exceeded the jurisdictional threshold (even where the investor had already filed under the Act).

Rule 802.21, 16 CFR § 802.21, exempts such additional filing requirements if notification was previously filed under the Act with respect to an earlier acquisition from the same Ultimate Parent Entity, except where the holdings would exceed a *subsequent notification threshold*. This exemption is relied on regularly by persons making incremental purchases of the stock of a target company, and eliminates the burden and costs associated with the multiple filings under the HSR Act that would otherwise be required in those cases.

The following charts provide a summary of the HSR Act's threshold adjustments:

¹ Available at: <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/E7-819.htm>

Size-Of-Transaction		Old Threshold	New Threshold (Effective February 21, 2007)
Jurisdictional Threshold	Basic Notification Threshold	\$56.7 million	\$59.8 million
	Subsequent Notification Thresholds	\$113.4 million	\$119.6 million
		\$567 million	\$597.9 million
		25% (if value exceeds \$1.134 billion)	25% (if value exceeds \$1.1958 billion)
		50% (where value exceeds \$56.7 million)	50% (where value exceeds \$59.8 million)

Size-Of-Person		Old Threshold	New Threshold (Effective February 17, 2006)
Jurisdictional Threshold	Size-of-Person Thresholds	\$11.3 million	\$12 million
		\$113.4 million	\$119.6 million
	Size-of-Person Inapplicable Where Transaction Exceeds	\$226.8 million	\$239.2 million

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Filing Fees

The dollar amount of the filing fees payable to the Federal Trade Commission with HSR Act filings are not subject to indexing; however, the thresholds applicable to the statutory filing fees do adjust with indexing. As of February 21, 2007, the schedule for filing fees will be as follows:

Greater than \$59.8 million but less than \$119.6 million	\$45,000
\$119.6 Million or greater but less than \$597.9 million	\$125,000
\$597.9 million or greater	\$280,000

Summary

The application of the HSR Act typically requires a detailed and careful analysis of a transaction. Proskauer's HSR team has extensive experience with the issues presented under the HSR Act. If you have any questions concerning a potential HSR filing requirement please contact one of the lawyers listed in this publication.

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Client Alert

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