

Client Alert

A report
for clients
and friends
of the firm **January 2006**

Revised Hart-Scott-Rodino Jurisdictional Thresholds

Effective February 17, 2006, the notification thresholds 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 are a product of the annual indexing of the HSR Act's thresholds required by the 2000 amendments to the Act. The thresholds were indexed for the first time on March 2, 2005.

As a result of the 2006 revisions to the HSR Act's jurisdictional thresholds, published in the Federal Register on January 18, 2006,¹ the basic notification threshold for all transactions will be increased from \$53.1 million to \$56.7 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 \$226.8 million or less (\$212.3 million prior to February 17, 2006) are not subject to the HSR Act unless the parties also meet the size-of-person test. Under the revised thresholds, the size-of-person test will be met where a person with annual net sales or total assets of \$113.4 million acquires a person engaged in manufacturing with *annual net sales or total assets* of \$11.3 million. When acquiring a person not engaged in manufacturing, the test is met only if the acquired person has *total assets* of

\$11.3 million (sales are not relevant). The test would also be met where any person with annual net sales or total assets of \$11.3 million (regardless of the lines of business engaged in) acquires any person with annual net sales or total assets of \$113.4 million.

In each instance where an acquiring person files under the Act, the acquired person is also 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 before the parties complete the transaction.

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

Size-Of-Transaction		Old Threshold	New Threshold (Effective February 17, 2006)
Jurisdictional Threshold	Basic Notification Threshold	\$53.1 Million	\$56.7 Million
	Subsequent Notification Thresholds	\$106.2 Million	\$113.4 Million
		\$530.7 Million	\$567 Million
		25% (if value exceeds \$1,061.3 million)	25% (if value exceeds \$1,134 million)
		50% (where value exceeds \$53.1 million)	50% (where value exceeds \$56.7 million)

¹ Available at: http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=2943&dbname=2006_register.

Size-Of-Person		Old Threshold	New Threshold (Effective February 17, 2006)
Jurisdictional Threshold	Size-of-Person Thresholds	\$10.7 Million	\$11.3 Million
		\$106.2 Million	\$113.4 Million
	Size-of-Person Inapplicable Where Transaction Exceeds	\$212.3 Million	\$226.8 Million

About Subsequent Notification Thresholds

While subsequent notification thresholds facially appear to create additional reporting obligations, they actually exempt many transactions. The language of the original 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 an investor acquired one additional share of a target company if the value of the investor's holdings in the target exceed 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 and the contemplated subsequent acquisition will be consummated within 5 years of the expiration or early termination of the waiting period for the prior acquisition, 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.

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 17, 2006, the schedule for filing fees will be as follows:

Transaction Size	Filing Fee
Greater than \$56.7 Million but less than \$113.4 Million	\$45,000
\$113.4 Million or greater but less than \$567 Million	\$125,000
\$567 million or greater	\$280,000

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Client Alert
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Summary

The application of the HSR Act typically requires a detailed analysis of various aspects of a proposed acquisition. Our HSR team has long and extensive experience with these questions. If you have any questions concerning a potential HSR filing requirement please contact one of the lawyers identified in the box to the left.

You can also visit our Website at www.proskauer.com

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