

# Client Alert

A report  
for clients  
and friends  
of the firm      February 2005

## FTC Raises HSR Deal Thresholds

On January 25, 2005, the Federal Trade Commission ("FTC") announced its intention to revise jurisdictional thresholds for the Hart-Scott-Rodino Improvements Act of 1976, as amended (the "HSR Act"). These new thresholds impact the obligations of parties to file and the amount of the requisite filing fee. Going forward the FTC intends to revise jurisdictional thresholds annually based on changes in the gross national product. The new thresholds will become effective 30 days after publication in the Federal Register.

### Size-of-Transaction and Size-of-Person Tests

The prior and newly adjusted size-of-transaction and size-of-person reporting thresholds for 2005 are as follows:

Size-of-Transaction Threshold:	
Acquiring person holds, as a result of the acquisition, assets or voting securities valued at:	
Original	Adjusted
≥ \$50 million	≥ \$53.1 million

Size-of-Person Thresholds:		
Annual net sales or total assets of:		
	Original	Adjusted
Test:	Person A: ≥ \$100 million	Person A: ≥ \$106.2 million
	Person B: ≥ \$10 million	Person B: ≥ \$10.7 million
Test Deemed Satisfied:	Size-of-transaction is ≥ \$200 million	Size-of-transaction is ≥ \$212.3 million

### Notification Thresholds

Because the HSR Act provides that the size-of-transaction test is satisfied when an acquiring person holds, as a result of the acquisition, assets or voting securities of a floor amount (now \$53.1 million), parties could trigger reporting obligations each time they increase their holdings in an entity. As a result, Rule 801.1(h), 16 C.F.R. S 801.1(h), promulgated under the HSR Act establishes five notification thresholds designed to act as exemptions to relieve parties of the burden of having to file multiple notifications. The Rule states that when notification is filed the acquiring person is allowed one year from the end of the waiting period to cross the threshold stated in the filing. If within the year the person reaches the threshold it may continue to acquire assets or voting securities up to the next threshold for five years from the expiration of the waiting period without having to file another notification with the reviewing agencies. As soon as the acquiring person crosses another threshold as a result of its acquisitions, however, it would need to file again.

The prior and newly adjusted notification thresholds for 2005 are:

Notification Thresholds:	
Original	Adjusted
\$50 million	\$53.1 million
\$100 million	\$106.2 million
\$500 million	\$530.7 million
25%, if valued at ≥ \$1 billion	25%, if valued at ≥ \$1,061.3 million
50%, if valued at ≥ \$50 million	50%, if valued at ≥ \$53.1 million

Of the five thresholds, the three dollar thresholds apply to acquisitions involving assets or voting securities and the two percentage thresholds pertain only to acquisitions of voting securities.

## Filing Fee Thresholds

The filing fee is determined based on the size of the transaction. As such, the FTC's adjustments to thresholds impact which transactions qualify for a corresponding filing fee; however, fee amounts have not changed.

The filing fees for 2005 are as follows:

Filing Fee	Size-of-Transaction
\$45,000	≥ \$53.1 million but < \$106.2 million
\$125,000	≥ \$106.2 million but < \$530.7 million
\$280,000	≥ \$530.7 million

## The HSR Regime

The HSR Act requires parties contemplating mergers or acquisitions of assets or voting securities that meet or exceed certain jurisdictional thresholds in the HSR Act to file notification with the FTC and the U.S. Department of Justice and to wait a designated period of time prior to consummating such transaction. There are three jurisdictional requirements in the HSR Act: (i) the "commerce" test, which requires that the transaction involve persons engaged in interstate commerce (and which is regularly found to be satisfied); (ii) a "size-of-person" test, which requires parties of the transaction to be of a requisite size, unless the size of the transaction is so large that this test is deemed satisfied; and (iii) a "size-of-transaction" test, which requires that, as a result of the acquisition, the acquiring person holds a requisite amount of assets or voting securities of the acquired person.

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