

## FTC Raises Hart-Scott-Rodino Thresholds

January 18, 2008

The Federal Trade Commission (FTC) has announced that it will raise the Hart-Scott-Rodino Act (HSR Act) jurisdictional and filing fee thresholds. The new thresholds are expected to be effective on or about February 18, 2008. The new rules include an increase in the size-of-transaction test from greater than \$59.8 million to greater than \$63.1 million, meaning that under the new threshold, acquisitions valued for HSR Act purposes at \$63.1 million or less will not require preclosing filing and approval.

### New Jurisdictional Thresholds

As a general rule, the HSR Act requires both acquiring and acquired persons to file notifications if the following *post-adjustment* jurisdictional thresholds are met:

1. One person has sales or total assets of at least \$126.2 million;
2. The other person has sales or total assets of at least \$12.6 million; and
3. As a result of the transaction, the acquiring person will hold an aggregate amount of stock and assets of the acquired person valued at more than \$63.1 million; or
4. As a result of the transaction, the acquiring person will hold an aggregate amount of stock and assets of the acquired person valued at more than \$252.3 million, regardless of the sales or assets of the acquiring and acquired persons.

Conditions 1 and 2 are generally referred to as the “size-of-person” test, while conditions 3 and 4 are commonly described as the “size-of-transaction” test.

The HSR Act rules relating to acquisitions of partnership interests and membership interests in a limited liability company (LLC) remain the same. Acquisitions of economic control in an LLC or partnership may be reportable. “Control” is defined as having a right to 50% or more of the profits of a partnership or LLC or 50% or more of the assets upon the dissolution of such entity.

## New Filing Fee Thresholds

Filing fees are also determined by a threshold test relating to the size of the transaction; the fees themselves have not been adjusted:

Valuation of Transaction	Filing Fee
Greater than \$63.1 million, but less than \$126.2 million	\$45,000
\$126.2 million or greater, but less than \$630.8 million	\$125,000
\$630.8 million and greater	\$280,000

The figures above represent the new “as adjusted” threshold figures. The table below illustrates the changes.

Current Threshold (in millions)	“As Adjusted” Threshold (in millions)
\$12	\$12.6
\$59.8	\$63.1
\$119.6	\$126.2
\$239.2	\$252.3
\$579.9	\$630.8

These changes are being implemented pursuant to the 2000 amendments to Section 7A of the Clayton Act. Section 7A(a)(2) requires the FTC to revise the jurisdictional thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). The revised thresholds will apply to all transactions that close on or after the effective date.

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