

Weil Briefing: Antitrust/Competition

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HSR Act Filing Thresholds Revised Effective Mid-February 2009

On January 6, 2009, the U.S. Federal Trade Commission (“FTC”) announced revisions to the jurisdictional thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”), which will become effective 30 days after publication in the Federal Register. The HSR Act requires the FTC to revise the thresholds annually based on changes in the gross national product.

Under the revisions, the size of transaction threshold has been increased from \$63.1 million to \$65.2 million. Consequently, the HSR Act notification and waiting requirements will now apply to acquisitions resulting in the acquiring person holding assets and/or voting securities of the acquired person valued in excess of \$65.2 million. The HSR Act requirements also will apply to purchases of partnership interests and membership interests of a limited liability company provided that (i) the acquiring person obtains control and (ii) the value of the interests held by the acquiring person are valued in excess of \$65.2 million.

Acquisitions that do not exceed \$260.7 million in value (previously \$252.3 million) also have to meet the size of person threshold to trigger the HSR Act requirements. Under the revisions, the size of person threshold generally will be met if one of the parties has total assets or annual net sales of \$130.3 million or more and the other party has total assets or annual net sales of \$13.0 million or more.

In addition, acquisitions that result in the ownership of less than 50% of the outstanding voting securities of a corporation require HSR notification when certain dollar thresholds are reached. Under the revisions, premerger filing is now required for such acquisitions when the value of the total voting securities acquired and held reach each of the following dollar thresholds: (a) \$65.2 million, (b) \$130.3 million, (c) \$651.7 million or more, and/or (d) 25% of an issuer’s outstanding voting securities if valued in excess of \$1.303.4 billion.

The HSR Act filing fee thresholds also have been revised as shown in the following chart.

<u>Transactions valued at:</u>	<u>HSR Act Filing Fee</u>
<u>More than \$65.2 million but less than \$130.3 million</u>	<u>\$45,000</u>
<u>\$130.3 million but less than \$651.7 million</u>	<u>\$125,000</u>
<u>\$651.7 million or more</u>	<u>\$280,000</u>

Further information on the FTC's revised threshold is available here:

<http://www.ftc.gov/opa/2009/01/claytonact.shtm>

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