



Client Alert

Hart-Scott-Rodino Thresholds Increase on March 2, 2005

February 8, 2005
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Effective March 2, 2005, the minimum transaction value triggering a Hart-Scott-Rodino filing will increase from \$50 million to \$53.1 million, subject to similarly indexed size-of-person tests for transactions valued between \$53.1 million and \$212.3 million (formerly \$200 million). All acquisitions of stock or assets valued at more than \$212.3 million must be reported unless otherwise exempt. The HSR amendments in 2001 require the Federal Trade Commission to revise the HSR Act's jurisdictional thresholds annually based on changes in the United States Gross National Product. This change is the first such indexing under the 2001 amendments.

When the Hart-Scott-Rodino (HSR) Act was amended in 2001 and the jurisdictional thresholds were raised for the first time in over 25 years, the amended statute also required the Federal Trade Commission (FTC) to revise the jurisdictional thresholds annually based on changes in the United States Gross National Product. The first such indexing will become effective on March 2, 2005. 70 Fed. Reg. 4988 (Jan. 31, 2005). Each provision that will be indexed is described below, followed by a chart summarizing all of the increases.

Antitrust & Competition

Initial threshold increases from \$50 million to \$53.1 million

Under the current HSR Regulations, the initial transaction value that may require an HSR filing is one that is more than \$50 million. With indexing, the initial threshold will increase to \$53.1 million, and the size-of-person tests for transactions valued between \$50 million and \$200 million will also increase:

Current HSR Provision	New Indexed Threshold
\$50 million jurisdictional threshold	\$53.1 million
\$200 million jurisdictional threshold	\$212.3 million
Size-of-person thresholds for transactions valued between \$50 million and \$200 million	
▶ \$10 million size-of-person	▶ \$ 10.7 million
▶ \$100 million size-of-person	▶ \$106.2 million

The HSR Regulations contain “notification thresholds” which partially mirror the jurisdictional thresholds. An HSR filing must be made the first time a jurisdictional threshold will be crossed, if no exemption is available. For example, if a person already holds stock in a company, and acquires additional holdings which, aggregated with his prior holdings are valued in excess of \$50 million at current market value, the parties must comply with HSR before additional shares may be acquired. Once an HSR filing is made, the acquirer may continue to acquire shares up to the next notification threshold for five years.

Current HSR Notification Threshold	New Indexed Threshold
\$50 million	\$ 53.1 million
\$100 million	\$106.2 million
\$500 million	\$530.7 million
25% of shares worth over \$1 billion	25% of shares worth over \$106.2 billion
50% of shares worth over \$50 million	50% of shares worth over \$53.1 million

Amount of Filing Fees Unchanged

The filing fees will not change, but the transaction value which triggers each fee will be indexed with the new jurisdictional thresholds:

Current HSR Provision	New Indexed Threshold	Filing Fee Amount
\$50 million value of transaction	\$53.1 million	\$45,000
\$100 million value of transaction	\$106.2 million	\$125,000
\$500 million value of transaction	\$530.7 million	\$280,000

A number of other HSR provisions and examples are linked to the jurisdictional amounts and will be indexed accordingly. Some of the more important provisions are listed below. The mineral reserves exemptions of \$500 million for oil and gas and \$200 million for coal are unchanged.

Current HSR Provision	New Indexed Threshold
Size-of-person test for joint venture participants	
▶ \$100 million	▶ \$106.2 million
▶ \$10 million	▶ \$ 10.7 million
Exempt acquisition of foreign assets	
▶ Value of U.S. assets less than \$50 million	▶ Less than \$53.1 million
▶ If transaction is under \$200 million and	▶ If transaction is under \$212.3 million and
▪ Aggregate sales in/into US of both parties are less than \$110 million	▪ Aggregate sales in/into US of both parties are less than \$116.8 million
▪ Aggregate assets in US of both parties valued less than \$110 million	▪ Aggregate assets in US of both parties valued less than \$116.8 million
Exempt acquisition of foreign securities	
▶ Value of U.S. assets less than \$50 million and sales in/into US less than \$50 million*	▶ Less than \$53.1 million
▶ If transaction is under \$200 million and	▶ If transaction is under \$212.3 million and
▪ Aggregate sales in/into US of both parties are less than \$110 million	▪ Aggregate sales in/into US of both parties are less than \$116.8 million
▪ Aggregate assets in US of both parties valued less than \$110 million	▪ Aggregate assets in US of both parties valued less than \$116.8 million

*/If the acquirer is non-US, it must acquire control of the issuer; otherwise the acquisition is exempt no matter what the value.

The HSR Regulations will be amended to add the words “as amended” after each indexed figure. In the future, in January of each year, the FTC will publish a chart showing what the new adjusted amounts will be.

Summary Chart of HSR Indexing

Current HSR Provision	New Indexed Amount	Citation
\$50 million jurisdictional threshold	\$53.1 million	15 USC § 7A(a)(2)(B)(i)
\$200 million jurisdictional threshold	\$212.3 million	15 USC § 7A(a)(2)(A)
\$10 million size-of-person test	\$10.7 million	15 USC § 7A(a)(2)(B)(ii)
\$100 million size-of-person test	\$106.2 million	15 USC § 7A(a)(2)(B)(ii)
\$50 million notification threshold	\$53.1 million	16 CFR § 801.1(h)(1)
\$100 million notification threshold	\$106.2 million	16 CFR § 801.1(h)(2)
\$500 million notification threshold	\$530.7 million	16 CFR § 801.1(h)(3)
25% of shares > \$1 billion notification threshold	25% of shares > \$106.2 billion	16 CFR § 801.1(h)(4)
50% of shares > \$50 million notification threshold	50% of shares > \$53.1 million	16 CFR § 801.1(h)(5)
\$50 million filing fee trigger	\$53.1 million [\$45,000]	15 USC § 18a note 3(b)(1)
\$100 million filing fee trigger	\$106.2 million [\$125,000]	15 USC § 18a note 3(b)(2)
\$500 million filing fee trigger	\$530.7 million [\$280,000]	15 USC § 18a note 3(b)(3)
Size-of-person test for joint venture participants if value < \$200 million:	< \$212.3 million	16 CFR § 801.40
<ul style="list-style-type: none"> ▶ \$100 million ▶ \$10 million 	<ul style="list-style-type: none"> ▶ \$106.2 million ▶ \$10.7 million 	
Exempt acquisition of foreign assets:		16 CFR § 801.50
<ul style="list-style-type: none"> ▶ Sales in or into the U.S. assets < \$50 million ▶ Transaction < \$200 million and <ul style="list-style-type: none"> ▪ Aggregate sales in/into US of both parties < \$110 million ▪ Aggregate assets in US of both parties valued < \$110 million 	<ul style="list-style-type: none"> ▶ < \$53.1 million ▶ < \$212.3 million and <ul style="list-style-type: none"> ▪ < \$116.8 million ▪ < \$116.8 million 	

Current HSR Provision	New Indexed Amount	Citation
Exempt acquisition of foreign securities		16 CFR § 801.51
<ul style="list-style-type: none">▶ Value of U.S. assets less than \$50 million and sales in/into US less than \$50 million▶ Transaction < \$200 million and<ul style="list-style-type: none">▪ Aggregate sales in/into US of both parties < \$110 million▪ Aggregate assets in US of both parties valued < \$110 million	<ul style="list-style-type: none">▶ < \$53.1 million▶ < \$212.3 million and<ul style="list-style-type: none">▪ < \$116.8 million▪ < \$116.8 million	

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