

Articles

Higher HSR Threshold Requirements Effective February 27, 2012

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The Federal Trade Commission's annual changes to the dollar thresholds under the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act) become effective on February 27, 2012. The revisions, which are based on changes in US gross national product, increase the dollar thresholds necessary to trigger the HSR Act's reporting requirements.

Increased "Size-of-Transaction" and "Size-of-Person" Thresholds

The HSR Act generally applies to mergers and acquisitions of voting securities, assets, and noncorporate interests that meet the "size-of-person" and/or "size-of-transaction" tests. Any transaction closing on or after February 27, 2012 may be reportable if it meets the following revised criteria:

- **Size of Transaction** - The transaction is reportable if (1) the transaction is valued in excess of \$272.8 million (up from \$263.8 million), **or** (2) the transaction is valued in excess of \$68.2 million (up from \$66 million) but less than \$272.8 million **and** the "size-of-person" test is also met.
- **Size of Person** - For transactions in category (2) above, the transaction is only reportable if one party has total assets or annual net sales of at least \$136.4 million (up from \$131.9 million) **and** the other party has total assets or annual net sales of at least \$13.6 million (up from \$13.2 million).

While the HSR reporting thresholds have increased, the filing fees remain unchanged and range from \$45,000 to \$280,000 depending on the size of the transaction.

Increased Interlocking Directorate Thresholds

The FTC also increased the thresholds under Section 8 of the Clayton Act, effective January 27, 2012. As revised, Section 8 prohibits a person from serving as a director or officer of two competing corporations if each corporation has capital, surplus, and undivided profits totaling more than \$27,784,000 (up from \$26,867,000), unless the competitive sales of either corporation are less than \$2,778,400 (up from \$2,686,700).

Andrews Kurth advises clients on antitrust matters and can provide current information on HSR reporting requirements and other FTC rules and guidelines. If you would like more information about the subject of this E-Alert or any other antitrust matter, please contact Jerry Beane, Kay Lynn Brumbaugh or John Tucker.

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