

January 14, 2013

Filing thresholds under the Hart-Scott-Rodino (HSR) Act will increase February 11, 2013 to reflect growth in the Gross National Product (GNP). Many transactions valued over \$70.9 million will now have to be notified to federal antitrust authorities.

The HSR Act requires parties to file notification with the Federal Trade Commission and Department of Justice when a proposed transaction—such as a merger, joint venture, stock or asset acquisition, or exclusive license—meets specified thresholds and no exemptions apply. If notification is required, the transaction cannot close while the statutory waiting period runs and the agencies review the transaction. Most commonly, a filing is required if the parties meet both the "size-of-person" and "size-of-transaction" thresholds, which will be modified by the new thresholds to be:

**Size-of-Person Test:** met if one party to the transaction has \$141.8 million or more in annual sales or total assets and the other has \$14.2 million or more in annual sales or total assets.

**Size-of-Transaction Test:** met if, as a result of the transaction, the buyer will acquire or hold voting securities or assets of the seller, valued in excess of \$70.9 million.

The thresholds for HSR filing fees will also increase, though the filing fees themselves will not change.

The key threshold changes are summarized in the table below:

BASE HSR THRESHOLDS	2012 THRESHOLDS	2013 THRESHOLDS <i>(effective 2/11)</i>
\$50 million "size of transaction" test	\$68.2 million	\$70.9 million
\$10 million "size of person" test	\$13.6 million	\$14.2 million
\$100 million "size of person" test	\$136.4 million	\$141.8 million
\$200 million "size of transaction" test (renders size of person test inapplicable)	\$272.8 million	\$283.6 million
\$50 million notification threshold	\$68.2 million	\$70.9 million

BASE HSR THRESHOLDS	2012 THRESHOLDS	2013 THRESHOLDS <i>(effective 2/11)</i>
\$100 million notification threshold	\$136.4 million	\$141.8 million
\$500 million notification threshold	\$682.1 million	\$709.1 million
25 percent of stock worth \$1 billion notification threshold	25 percent of stock (if worth at least \$1,364.1 million)	25 percent of stock (if worth at least \$1,418.1 million)
50 percent (if over \$50 million) notification threshold	50 percent (if over \$68.2 million)	50 percent (if over \$70.9 million)
\$45,000 filing fee is required	Value of the acquisition is greater than \$68.2 million but less than \$136.4 million	Value of the acquisition is greater than \$70.9 million but less than \$141.8 million
\$125,000 filing fee	Value of the acquisition is at least \$136.4 million but less than \$682.1 million	Value of the acquisition is at least \$141.8 million but less than \$709.1 million
\$280,000 filing fee (highest HSR filing fee tier)	Value of the acquisition reaches or exceeds \$682.1 million	Value of the acquisition reaches or exceeds \$709.1 million
Exemption thresholds applicable to acquisitions of voting securities or assets of foreign issuers; indirect acquisitions of exempt assets	Level ties to a \$68.2 million threshold	Level ties to a \$70.9 million threshold

Failure to file an HSR Notification and Report Form remains subject to a statutory penalty of up to \$16,000 per day of noncompliance.

The HSR thresholds are only one part of the analysis to determine whether an HSR filing will be required, and the rules are complex, so we suggest consulting with an HSR expert when contemplating any transaction that may be subject to HSR notification requirements.

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