



FTC ISSUES REVISED 2008 HSR THRESHOLDS

As required by statute, on January 29, 2008 the Federal Trade Commission announced increases to the filing and other dollar-denominated thresholds contained in the Hart-Scott-Rodino Antitrust Improvements Act of 1976. These increases are made annually based on changes in the U.S. Gross National Product and will apply to all transactions that close on or after February 28, 2008.

General Threshold to Determine Initial HSR Filing Obligation. Effective February 28, 2008, the minimum notification threshold under the HSR Act will increase from \$59.8 million to \$63.1 million. Thus, an acquisition will potentially trigger an HSR filing only if, as a result of the acquisition, the acquirer would hold assets, voting securities and/or non-corporate interests of the acquired person valued in excess of \$63.1 million. The revised 2008 thresholds are as follows:

Threshold Type	2007 Threshold	2008 Threshold <i>(Effective for transactions closing on or after February 28, 2008)</i>
Minimum "Size-of-Transaction" test	\$59.8 million	\$63.1 million
"Size-of-Transaction" test requiring HSR filing regardless of "Size-of-Person"	\$239.2 million	\$252.3 million
Minimum "Size-of-Person" Test (applicable to transactions valued at less than \$252.3 million)	\$12 million/ \$119.6 million	\$12.6 million/ \$126.2 million

Additional Notification Thresholds. As stated above, an acquisition that results in an acquirer holding more than \$63.1 million worth of the assets or stock of an acquired person crosses the first of five staggered "notification thresholds." The rules identify four additional thresholds that determine whether a subsequent acquisition from the same acquired person will require additional HSR filings. The revised 2008 additional notification thresholds are as follows:

Original Notification Thresholds	2007 Notification Thresholds	2008 Notification Thresholds
\$100 million	\$119.6 million	\$126.2 million
\$500 million	\$597.9 million	\$630.8 million
25% of the Voting Securities of an issuer	(if the 25% stake is valued at greater than \$1.1958 billion)	(if the 25% stake is valued at greater than \$1.2615 billion)
50% of the Voting Securities of an issuer	(if the 50% stake is valued at greater than \$59.8 million)	(if the 50% stake valued at greater than \$63.1 million)

In effect, these staggered thresholds are designed to act as exemptions to relieve parties of the burden of making additional filings each time additional shares of the same person are acquired. As such, once a filing is made, the acquiring person is allowed one year from the end of the waiting period to cross the threshold stated in the filing and, if it reaches the stated threshold within that period, it may continue acquiring shares up to the next threshold for five years from the end of the waiting period.

Filing Fees. Although the filing fee amounts have not changed, the above increases to the thresholds affect the calculation of the three-tiered HSR filing fees as follows:

Transaction Size	Filing Fees (Effective for filings made on or after February 28, 2008)
\$63,100,000 to less than \$126,200,000	\$45,000
\$126,200,000 to \$630,800,000	\$125,000
Transactions in Excess of \$630,800,000	\$280,000

Note that while the new thresholds for determining the requirement to file are effective for all **transactions closing** on or after February 28, 2008, the new thresholds for determining the filing fee calculation are effective for all **filings first made** on or after February 28, 2008.

What to Do?

Companies should be mindful of the newly increased dollar thresholds in assessing the filing requirements of the HSR Act for two basic reasons. First, the new thresholds should be consulted in order to avoid making a filing that is not required under the Act's revised \$63.1 million and subsequent notification thresholds. Additionally, since the practical effect of the new thresholds is to reduce significantly the filing fee for many transactions, the use of the old thresholds will result in paying an incorrect and artificially inflated filing fee.

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This Alert has been prepared for general informational purposes only and is not intended as legal advice. Antitrust counsel should be consulted both prior to consummating any transaction, to ensure that the appropriate HSR Act filing thresholds have been considered, and prior to filing any HSR Notification Form, to ensure that all technical and other aspects of the HSR Act are satisfied.