

FTC Announces Increased HSR Thresholds; Larger Changes on the Horizon

The Federal Trade Commission has announced revised jurisdictional and filing fee thresholds under the *Hart-Scott-Rodino Antitrust Improvements Act of 1976*, as amended. The new thresholds represent an approximately 4% increase from last year, when the thresholds were lowered based on changes in the gross national product. This annual update precedes more sweeping changes to the HSR Act and rules, which are expected to be published in the Federal Register during the first quarter of 2011.

Transactions closing on or after **February 24, 2011** will be subject to the following revised thresholds:

- **Size-of-Transaction Test:** The \$50 million (as adjusted) threshold used in the size-of-transaction test will **increase** from \$63.4 million to **\$66 million**.
- **Size-of-Persons Test:** The \$10 million (as adjusted) and \$100 million (as adjusted) sales and assets thresholds used in the size-of-persons test will **increase** from \$12.7 million to **\$13.2 million** and from \$126.9 million to **\$131.9 million**, respectively. The \$200 million (as adjusted) threshold, below which the size-of-persons test applies, will **increase** from \$253.7 million to **\$263.8 million**.
- **Filing Fees:** Filing fee thresholds based upon the value of assets or voting securities being acquired will be revised as follows:

Value of Transaction	Filing Fee
\$66 million to \$131.9 million (previously \$63.4 million to \$126.9 million)	\$45,000
\$131.9 million to \$659.5 million (previously \$126.9 million to \$634.4 million)	\$125,000
\$659.5 million or more (previously \$634.4 million or more)	\$280,000

While the revised thresholds are part of a yearly update, broader changes to the HSR Act, rules and form are looming. Based on the FTC's Notice of Proposed Rulemaking from August 2010, the most notable proposed changes which may increase the burden for filers include:

- **The creation of an "associate" definition.** The term "associates" will capture entities that manage, are managed by, or are under common management with, the acquiring person (for example, a fund's general partner and all funds sharing the same general partner or investment committee). Parties will be required to disclose such associates' controlled and non-controlled investments to the extent their activities overlap with the target's activities;

- **The requirement to provide additional documents, referred to as Item 4(d) documents,** now explicitly including:
 - offering memoranda (and documents which “serve the purpose of” offering memoranda), if such documents contain a reference to the acquired entity or assets and were created within two years of the HSR filing, regardless if created by or for a director or officer or for purposes of the transaction for which HSR is filed,
 - investment banker and other third-party materials, if such documents contain a reference to the acquired entity or assets, were created for a director or officer within two years of the HSR filing for the purpose of evaluating or analyzing market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets *irrespective of whether created for purposes of the transaction for which HSR is filed*, and
 - synergy and efficiency documents prepared by or for directors or officers for purposes of the transaction for which HSR is filed; and
- **Changes to Revenue Reporting.** The Census revenue reporting concepts currently embodied in the form are being revamped, including a new requirement to disclose products manufactured outside of the U.S. but sold into the U.S. and more detailed disclosure of manufactured products for the reporting person’s most recent completed year.

For additional information, please feel free to contact any member of Ropes & Gray’s [Antitrust](#) Practice Group.