

Alert

Increased HSR Act Thresholds Announced for 2016

January 21, 2016

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), requires parties to acquisitions of voting securities, assets or non-corporate interests meeting certain thresholds to make a premerger notification to the Federal Trade Commission (“FTC”) and the Antitrust Division of the Department of Justice, and to observe a waiting period prior to consummating such acquisitions. On Jan. 21, 2016, the FTC announced its annual adjustments to the current HSR Act thresholds. Any transaction that will be consummated on or after the Feb. 25, 2016 effective date of such adjustments may be reportable under the HSR Act if, as a result of such transaction, the acquiring person will hold voting securities, assets and/or non-corporate interests of the acquired person valued above \$78.2 million (the current adjusted minimum threshold is \$76.3 million). The new adjusted thresholds reflect changes in the gross national product for the preceding fiscal year.

The updated size-of-transaction and size-of-person thresholds under the HSR Act are set forth below:

| Threshold | HSR Act Original | 2016 Adjusted |
|--|--------------------------------|------------------------------------|
| Size-of-transaction when size-of-person test is met | \$50 million | \$78.2 million |
| Size-of-person (if applicable) | \$10 million and \$100 million | \$15.6 million and \$156.3 million |
| Size-of-transaction above which size-of-person test does not apply | \$200 million | \$312.6 million |

The filing fees applicable to premerger notifications filed under the HSR Act have not changed in over a decade and will continue as follows:

| Size-of-Transaction (as adjusted) | Filing Fee |
|---|------------|
| Valued at greater than \$78.2 million but less than \$156.3 million | \$45,000 |
| Valued at \$156.3 million or greater but less than \$781.5 million | \$125,000 |
| Valued at \$781.5 million or greater | \$280,000 |

When a premerger notification has been filed under the HSR Act, and the applicable waiting period has expired or been terminated, any additional acquisitions by the same acquiring person of the same issuer’s voting securities will be exempt from notification, so long as:

- The acquiring person’s holdings crossed the notification threshold with respect to which the premerger notification was made, within one year of the expiration or early termination of the HSR Act waiting period; *and*
- The subsequent acquisition is consummated within five years following the expiration or early termination of the HSR Act waiting period

unless a higher notification level is met or exceeded. The various notification levels are set forth below:

| HSR Act Original | 2016 Adjusted |
|--|---|
| \$50 million | \$78.2 million |
| \$100 million | \$156.3 million |
| \$500 million | \$781.5 million |
| 25 percent if value of voting securities to be held is greater than \$1 billion | 25 percent if value of voting securities to be held is greater than \$1,563.0 billion |
| 50 percent if value of voting securities to be held is greater than \$50 million | 50 percent if value of voting securities to be held is greater than \$78.2 million |

Any subsequent acquisition would be subject to the adjusted thresholds in effect when such subsequent acquisition is consummated.

There are many complex and technical coverage requirements and exemptions under the HSR Act. Accordingly, the advice of counsel must be sought to determine the applicability of the HSR Act’s filing requirements to particular situations.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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