

# Alerts & Publications

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## FTC Announces New HSR Reporting Thresholds

January 19, 2010

On January 19, 2010, the Federal Trade Commission announced changes to the reporting thresholds and exemptions under the Hart-Scott-Rodino Act of 1976 (the "HSR Act"). These changes result from HSR Act amendments enacted in 2000 requiring the FTC to adjust reporting and exemption thresholds annually based on changes in the Gross National Product. This is the first year in which the thresholds have declined. The changes apply to all transactions that close on or after the effective date, which will be approximately February 19th (30 days following Federal Register publication). Under the new thresholds:

- The minimum size-of-transaction threshold is \$63.4 million (down from \$65.2 million). Acquisitions below this threshold are not reportable.
- Transactions exceeding the size-of-transaction threshold—but less than \$253.7 million—are reportable if the ultimate parent entity of one party has sales or assets of at least \$126.9 million, and the ultimate parent entity of the other party has sales or assets of at least \$12.7 million (down from \$130.3 million and \$13.0 million, respectively) (the "size-of-person" test).
- Transactions valued at more than \$253.7 million (down from \$260.7 million) are reportable regardless of the size-of-person test.

Filing fees did not change, but the size-of-transaction thresholds (upon which the filing fee is based) decreased. Under the new thresholds, the filing fee is:

- \$45,000 for transactions with a value of at least \$63.4 million but less

than \$126.9 million (down from \$130.3 million).

- \$125,000 for transactions with a value of at least \$126.9 million but less than \$634.4 million (down from \$651.7 million).
- \$280,000 for transactions with a value of at least \$634.4 million.

The notification threshold for 25% of the outstanding voting shares is \$1.2687 billion, and for 50% of the outstanding voting shares is \$63.4 million (down from \$1.3034 billion and \$65.2 million, respectively).

Even if a transaction is reportable based on the above thresholds, it may qualify for one of the HSR Act's exemptions, some of which contain changed financial thresholds. For example, a U.S. person's acquisition of a foreign issuer's stock is exempt, unless the foreign issuer either has U.S. assets or sales exceeding \$63.4 million (down from \$65.2 million).

Elaborate rules govern deal valuation and exemptions under the HSR Act—consult HSR counsel to determine whether a deal is reportable.

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