

Changes to the HSR Rules Benefit Filing Parties

The Federal Trade Commission ("FTC") recently announced several changes to the Hart-Scott-Rodino ("HSR") premerger notification rules. As a result, fewer transactions will be reportable and, of those, some can be completed with a lower filing fee than in past years. The burden of filing also has been decreased slightly.

The good news for filing parties is that the thresholds which determine when filing is required and how large a filing fee must be paid have been raised. In addition, Securities and Exchange Commission ("SEC") filings, which previously had to be produced in hard copy, now may be incorporated by an Internet link.

Unfortunately, with the good news comes some bad news. The FTC has switched from using the 1997 version of the North American Industry Classification System ("NAICS") to the 2002 version. The base year for reporting revenue information has been changed from 1997 to 2002. Filing parties will therefore need to go through the time and expense of updating the base-year revenue information used in HSR filings.

Raising the Thresholds. The HSR premerger notification system applies to large transactions involving large parties engaged in commerce. The HSR Act provides that transactions valued at in excess of \$200 million are reportable without regard to the size of the parties. Transactions valued at in excess of \$50 million are reportable if either the acquiring or acquired person has annual net sales or total assets exceeding \$100 million and the other party has annual net sales or total assets exceeding \$10 million.

For acquisitions of less than 100% of the voting securities of the acquired person, additional notification thresholds apply at \$100 million, \$500 million, 25% of the voting securities if valued at over \$1 billion, and 50% of the voting securities if val-

ued at over \$50 million. By statute, however, all of the dollar-based thresholds must be indexed to changes in the gross national product.

Last year the thresholds were increased just over 6%. See [HSR Reporting Thresholds Increased](#) (February 2005). The stronger economy resulted in a slightly larger 6.8% increase this year. The chart on the next page summarizes the changes to the thresholds resulting from indexing. The revised thresholds will apply to all transactions that close on or after February 17, 2006.

Linking SEC Filings. The FTC has acted to relieve some of the burden of complying with Items 4(a) and (b) of the HSR Notification and Report Form, which request submission of annual reports, annual audit reports and regularly prepared balance sheets, and copies of certain SEC documents, such as Forms 10-K filed with the SEC. Previously, the FTC required paper copies of such documents to be submitted in response to these items. The modification to Items 4(a) and (b) will permit filing parties to instead provide an Internet address on the HSR Form linking directly to the documents.

Revising the Reporting of Revenue. The HSR Form and instructions have also been amended to require filers to report revenues using the 2002 version of the North American Industry Classification System ("NAICS") rather than the 1997 version when reporting revenues by industry and product codes in Items 5 and 7 of the HSR Form. The 2002 NAICS update by the Office of Management and Budget includes substantial code revisions within certain sectors and minor revisions in other sectors. Formerly, the HSR Form required parties to report any revenues derived from U.S. operations for 1997 and for the most recent year using 1997 NAICS. In addition, the base year has been changed from 1997 to 2002 so that filers are now required to report revenues for 2002 and for their most recent year.

The FTC has indicated that filers can use either 1997 or 2002 NAICS information until February 11, 2006, provided that all filing parties to a given transaction use the same base year. If you anticipate filing an HSR Form in the next few weeks, or if you intend to engage in any transactions in the near future that may be reportable under the HSR Act, it is advisable to begin the process of assembling revenue information for 2002 now.

You can access the press releases announcing the indexing changes to the HSR thresholds by clicking on the links below. From the link to the press release, you can access the official FTC announcement.

[Revised Thresholds](#)
[Linking SEC Filings](#)
[Revising the Reporting of Revenue](#)

HSR Act or Rule Provision	Indexed Value
\$50 million size-of-transaction test	\$56.7 million
\$200 million size-of-transaction test	\$226.8 million
\$100 million size-of-person test	\$113.4 million
\$10 million size-of-person test	\$11.3 million
\$50 million notification threshold	\$56.7 million
\$100 million notification threshold	\$113.4 million
\$500 million notification threshold	\$567 million
25% of voting securities valued at \$1 billion notification threshold	\$1.134 billion
Filing fees	Unchanged

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