# Antitrust Alert: New HSR Thresholds for 2012

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The annual adjustment of the dollar thresholds for pre-acquisition filings under the Hart-Scott-Rodino Act will take effect near the end of February (exact date still pending). **All transactions closing on or after the effective date will be governed by the new thresholds.**

Under the new thresholds, the parties to an acquisition or merger will in most cases need to file pre-acquisition notifications with the FTC and the Department of Justice and observe the Act's waiting periods before closing if the transaction will result in either of the following:

(a) The acquiring person will hold *more than $68.2 million* worth of voting securities and assets of the acquired person and the parties meet the "size-of-person" requirements below; **or**

(b) Regardless of the parties' sizes, the acquiring person will hold *more than $272.8 million* worth of voting securities and assets of the acquired person.

Meeting any one of the following three subtests satisfies the "size-of-person" test:

(1) A person with *$136.4 million or more* of total assets (on its most recent regularly-prepared balance sheet) or annual net sales (from its most recently completed fiscal year) proposes to acquire voting securities or assets of a person engaged in manufacturing (note that software is not considered manufacturing) with *$13.6 million or more* of annual net sales or total assets;

(2) A person with *$136.4 million* or more of total assets or annual net sales proposes to acquire voting securities or assets of a person **not** engaged in manufacturing with *$13.6 million or more* of total assets (net sales test does not apply); **or**

(3) A person with *$13.6 million* or more of total assets or annual net sales proposes to acquire voting securities or assets of a person with *$136.4 million or more* of annual net sales or total assets.

For the purposes of applying the thresholds, "person" means the ultimate parent entity of the party engaged in the transaction.

Note that certain exemptions may apply depending on the nature of the transaction and the nature and location of the assets and entities involved. Consequently, additional analysis is often required before making a final determination regarding the need for a filing.

Filing fee thresholds also have been adjusted: (i) $45,000 for transactions below $136.4 million, (ii) $125,000 for transactions of $136.4 million or more but below $682.1 million, and (iii) $280,000 for transactions of $682.1 million or more.

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