

Torys on Competition and Antitrust

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U.S. Federal Trade Commission Announces Increased M&A Reporting Thresholds

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The U.S. Federal Trade Commission (FTC) has announced its annual revisions to the notification and filing fee thresholds of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act).¹ The HSR Act is an antitrust statute that authorizes the FTC and the Antitrust Division of the Department of Justice (DOJ) to suspend certain types of acquisitions and evaluate their potential anticompetitive effects. The HSR Act requires the parties contemplating certain mergers or acquisitions that meet or exceed certain jurisdictional thresholds to provide information to the FTC and DOJ regarding the parties' business operations and the acquisition, and to await the expiry of a statutory waiting period before completing the proposed transaction. The FTC revises those thresholds annually, on the basis of the change in U.S. gross national product.

New HSR Thresholds

The following table lists the original HSR thresholds, the 2011 thresholds and the latest revised thresholds, which will become effective 30 days from their publication in the Federal Register (expected shortly).

	2011	2012
Original Threshold	Current Threshold	Revised Threshold
\$10 million	\$13.2 million	\$13.6 million
\$50 million	\$66.0 million	\$68.2 million
\$100 million	\$131.9 million	\$136.4 million
\$200 million	\$263.8 million	\$272.8 million

Under the revised thresholds, an acquisition is subject to the notification and waiting period requirements of the HSR Act if, as a result of the transaction, the buyer will hold assets or voting securities of the target with a value in excess of \$68.2 million (size-of-transaction test), and the parties to the transaction have in excess of \$13.6 million and \$136.4 million in either total assets or net annual sales (size-of-party test). The size-of-party test is not applied to transactions involving the acquisition of assets or voting securities valued in excess of \$272.8 million.

¹ As required by the 2000 amendments to Section 7A of the Clayton Act.

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The schedule for filing fees required when making an HSR notification filing with the FTC and DOJ will be as set forth below. Note that only the transaction-size thresholds have changed, not the filing fees themselves.

Transaction Size	Filing Fee
Greater than \$68.2 million but less than \$136.4 million	\$45,000
\$136.4 million or greater but less than \$682.1 million	\$125,000
\$682.1 million or greater	\$280,000

The failure to file a Notification and Report Form with the FTC and DOJ under the HSR Act remains subject to a penalty of up to \$16,000 per day for each day of noncompliance. **T**