

# “What keeps you up at night?”

Saul Ewing  
Mergers and Acquisitions  
Practice:

David S. Antzis  
Chair

## New HSR thresholds for 2012

By Joseph A. Denlinger and Michael A. Finio

### SUMMARY

**The Federal Trade Commission has just announced new filing threshold amounts for HSR Act Premerger Notification filings.**

On January 24, 2012, the Federal Trade Commission (“FTC”) announced its approval of new upwardly adjusted filing threshold amounts for Hart-Scott-Rodino Antitrust Improvements Act (the “HSR Act”) Premerger Notification filings. The newly adjusted threshold amounts will be published in the Federal Register within the next few days, and will become effective 30 calendar days after such publication (the “Effective Date”).

The threshold amounts for 2012 will be upwardly adjusted from the 2011 amounts as follows:

- Size of the Transaction — From \$66 million to \$68.2 million. Transactions closing after the Effective Date and valued at less than \$68.2 million (total value of assets and voting securities held as a result of the transaction) will not be reportable in 2012.
- Size of Person — Thresholds of \$131.9 million and \$13.2 million (total assets or annual net sales) will increase to \$136.4 million and \$13.6 million, respectively. Where a transaction closing after the Effective Date is valued at between \$68.2 million and \$272.8 million, at least one person must have total assets or annual net sales of at least \$13.6 million and the other person must have total assets or annual net sales of at least \$136.4 million for the transaction to be reportable in 2012.
- Unless an HSR exemption is applicable/available, transactions in excess of \$272.8 million (\$263.8 million for 2011) closing after the Effective Date will be reportable in 2012 regardless of the size of person test.

The filing fees for 2012 will remain the same, but the applicable threshold amounts will be upwardly adjusted. For transactions valued in excess of \$68.2 million but less than \$136.4 million, the filing fee is \$45,000; for transactions valued at \$136.4 million or greater but less than

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\$682.1 million, the filing fee is \$125,000; for transactions valued at \$682.1 million or greater, the filing fee is \$280,000.

The HSR Act is a complicated regulatory schema, with potential traps for the unwary. Civil penalties for failure to comply with the HSR Act can be assessed by the FTC at up to \$16,000 per day.

Should you have any questions about the information in this Alert or the potential reportability of a transaction, please do not hesitate to contact the authors.

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This Alert was written by Joseph A. Denlinger, a member of the firm's Mergers and Acquisitions Practice, and Michael A. Finio, a member of the firm's Commercial Litigation Practice. Joseph can be reached at 610.251.5081 or [jdenlinger@saul.com](mailto:jdenlinger@saul.com). Michael can be reached at 717.238.7671 or [mfinio@saul.com](mailto:mfinio@saul.com). This publication has been prepared by the Mergers and Acquisitions Practice for information purposes only.

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