

FTC Lowers Merger Filing Thresholds

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Parties to merger and acquisition transactions meeting certain size thresholds must notify the U.S. Federal Trade Commission (FTC) and Antitrust Division of the U.S. Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). In 2000, Congress required the FTC to revise the thresholds annually starting in Fiscal Year 2005, based upon changes in gross national product. For the first time since the FTC began updating (and raising) the thresholds, the FTC announced yesterday that this year's thresholds will be **lower** because GNP fell last year. For example, the original \$50 million size of transaction is currently \$65.2 million but will be reduced to \$63.4 million. The following chart shows the adjusted thresholds that will apply for each original threshold:

The adjusted thresholds will take effect on February 22, 2010. The complete Federal Register notice is available at <http://www.ftc.gov/os/2010/01/P859910section7afn.pdf>.

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Original Threshold	2010 Adjusted Threshold
\$10 million	\$12.7 million
\$50 million	\$63.4 million
\$100 million	\$126.9 million
\$110 million	\$139.6 million
\$200 million	\$253.7 million
\$500 million	\$634.4 million
\$1 billion	\$1.2687 billion

Under the new thresholds, a Notification and Report Form must generally be filed pursuant to the HSR Act when a buyer will hold voting securities or assets valued in excess of \$63.4 million, so long as the respective parties have in excess of \$12.7 million and \$126.9 million in either net annual sales or total assets. Acquisitions valued above \$253.7 million require notification irrespective of the size of the parties. For each notification, the acquiring party must indicate which of the following notification thresholds the transaction will exceed: (a) \$63.4 million, (b) \$126.9 million, (c) \$634.4 million, (d) 25% of the target's voting securities if valued in excess of \$1.2687 billion, or (e) 50% of the target's voting securities. The filing fees remain unchanged, but will apply to the new thresholds – \$45,000 for transactions in excess of \$63.4 million, \$125,000 for transactions of at least \$126.9 million, and \$280,000 for transactions of \$634.4 million or more.