

---

## Premerger Notification Requirements Set to Change on February 1

2000-12-27

As one of its final acts, the 106th Congress enacted legislation which modifies the rules for when advance notice of a merger, sale of stock or assets or other business transaction must be given to U.S. antitrust authorities. As a result, many small technology companies which were previously exempt from the premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 will find their exemption eliminated effective February 1, 2001.

Under the old law, in order for a transaction to be subject to a filing requirement, one party had to exceed \$100 million in revenue or assets and the other needed at least \$10 million in revenue or assets. Under the new law, if the total value of the transaction exceeds \$200 million, a filing must be made regardless of the size of the parties involved.

On the other hand, larger companies will now be able to avoid filing for some smaller-sized transactions that previously triggered a filing requirement. Generally speaking, under the new rules only parties to acquisitions of stock and assets valued in excess of \$50 million will be required to make a filing and wait thirty days (in the absence of early termination) to close. This is a significant increase over the current \$15 million level. Transactions valued between \$50 million and \$200 million will require filing only if one of the parties has revenue or assets in excess of \$100 million and the other party has revenue or assets in excess of \$10 million. As indicated above, filing will be required for all transactions valued at over \$200 million regardless of the size of the parties.

The filing fee structure has also been altered so that some parties will pay a fee of as much as \$280,000 instead of the current \$45,000. For transactions less than \$100 million in value, the current \$45,000 filing fee will continue to apply. The filing fee for transactions valued at or above \$100 million but less than \$500 million will increase to \$125,000. The filing fee for transactions valued at or above \$500 million will be \$280,000.

The new law includes a few other miscellaneous reforms. First, the filing thresholds will be automatically adjusted annually after September 30, 2004 by reference to a general economic index. Second, the government will have thirty days, rather than the current twenty, after substantial compliance with a "second request" to decide whether to challenge a transaction. Third, all deadlines falling on weekends or holidays will move to the next following business day, rather than

the previous business day.

The new law is part of a general appropriations bill that runs almost 250 pages. To read the relevant portions, click [here](#). Also following this article is a convenient chart summarizing significant changes.

The new law did not change one important thing -- as was true under the old law, determining whether or not a particular transaction is subject to HSR filing requirements can remain complex. For example, expected new guidance from the Federal Trade Commission concerning the appropriate valuation of transactions will have significant impact on whether a transaction will require a filing and what fee amount must be paid. As a result, any review of HSR filing requirements should be undertaken with the assistance of an advisor familiar with the relevant issues.

If you have any questions about this article, feel free to contact its authors Wendy Terry, +1 202 942 8416 or [wendy.terry@haledorr.com](mailto:wendy.terry@haledorr.com), and Hy David Rubenstein, +1 202 942-8427 or [hy.rubenstein@haledorr.com](mailto:hy.rubenstein@haledorr.com).

#### **Relevant excerpts from appropriations bill:**

HR 5548 IH  
106th CONGRESS  
2d Session  
H. R. 5548 SEC 630

Making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

October 25, 2000

Mr. ROGERS introduced the following bill; which was referred to the Committee on Appropriations

-

SEC. 630. (a) Section 7A(a) of the Clayton Act (15 U.S.C. 18a(a)) is amended to read as follows:

"(a) Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if--

"(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

"(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person--

"(A) in excess of \$200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 8(a)(5) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

"(B)(i) in excess of \$50,000,000 (as so adjusted and published) but not in excess of \$200,000,000 (as so adjusted and published); and

"(ii)(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more;

"(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more; or

"(III) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of \$10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d)."

(b) Section 605 of title VI of Public Law 101-162 (15 U.S.C. 18a note) is amended--

(1) by inserting "(a)" after "SEC. 605.",

(2) in the 1st sentence--

(A) by striking "at \$45,000" and inserting "in subsection (b)", and

(B) by striking "Hart-Scott-Rodino Antitrust Improvements Act of 1976" and inserting "section 7A of the Clayton Act", and

(3) by adding at the end the following:

"(b) The filing fees referred to in subsection (a) are--

"(1) \$45,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is less than \$100,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 8(a)(5) of the Clayton Act (15 U.S.C. 19(a)(5)) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003);

"(2) \$125,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$100,000,000 (as so adjusted and published) but less than \$500,000,000 (as so adjusted and published); and

"(3) \$280,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$500,000,000 (as so adjusted and published).",

(4) by striking "States." and inserting "States", and

(5) by adding a period at the end.

(c) Section 7A(e)(1) of the Clayton Act (15 U.S.C. 18a(e)(1)) is amended--

(1) by inserting "(A)" after "(1)", and

(2) by inserting at the end the following:

"(B)(i) The Assistant Attorney General and the Federal Trade Commission shall each designate a senior official who does not have direct responsibility for the review of any enforcement recommendation under this section concerning the transaction at issue, to hear any petition filed by such person to determine--

"(I) whether the request for additional information or documentary material is unreasonably cumulative, unduly burdensome, or duplicative; or

"(II) whether the request for additional information or documentary material has been substantially complied with by the petitioning person.

"(ii) Internal review procedures for petitions filed pursuant to clause (i) shall include reasonable deadlines for expedited review of such petitions, after reasonable negotiations with investigative staff, in order to avoid undue delay of the merger review process.

"(iii) Not later than 90 days after the date of the enactment of this Act, the Assistant Attorney General and the Federal Trade Commission shall conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process.

"(iv) Not later than 120 days after the date of enactment of this Act, the Assistant Attorney General and the Federal Trade Commission shall issue or amend their respective industry guidance, regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform in this subparagraph.

"(v) Not later than 180 days after the date the of enactment of this Act, the Assistant Attorney General and the Federal Trade Commission shall each report to Congress--

"(I) which reforms each agency has adopted under this subparagraph;

"(II) which steps each has taken to implement such internal reforms; and

"(III) the effects of such reforms."

(d) Section 7A of the Clayton Act (15 U.S.C. 18a) is amended--

(1) in subsection (e)(2), by striking "20 days" and inserting "30 days", and

(2) by adding at the end the following:

"(k) If the end of any period of time provided in this section falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103(a) of title 5 of the United States Code), then such period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal public holiday."

(e) This section and the amendments made by this section shall take effect on the 1st day of the 1st month that begins more than 30 days after the date of the enactment of this Act.

## Overview of Changes

PROVISION CHANGED	PREVIOUS PROVISION	NEW PROVISION
Size-of-Transaction Test	Act only applies to acquisitions of stock and/or assets valued in excess of \$15 million.	Act only applies to acquisitions of stock and/or assets valued in excess of <b>\$50</b> million.
Size-of-Person Test	Act only applies to acquisitions	If Size-of-Transaction is \$200 million

	when the parties meet \$100 million and \$10 million size tests.	or less – no change.  If Size-of-Transaction is greater than \$200 million, then there is no Size-of-Person Test and all acquisitions are subject to the Act regardless of the size of the parties.
Filing Fees	\$45,000 filing fee for all transactions.	\$45,000 filing fee if the Size-of-Transaction is less than \$100 million.  \$125,000 filing fee if the Size-of-Transaction is \$100 million or more, but less than \$500 million.  \$280,000 filing fee if the Size-of-Transaction is \$500 million or more.
Requests for Additional Information (Second Requests)	The HSR waiting period is 20 days from the time of substantial compliance with the request.	The HSR waiting period is <b>30</b> days from the time of substantial compliance with the request.
Expiration of Waiting Periods	Waiting period expires on the last calendar day of the particular period.	Waiting period expires on the last calendar day of the particular period, unless such day is a Saturday, Sunday, or legal public holiday in which case the waiting period is extended to the next day which is not Saturday, Sunday, or legal public holiday.
Review of Requests for Additional Information.	Review by senior FTC and DOJ litigators was possible.	Review by a designated senior FTC and DOJ official (not having direct responsibility of any enforcement recommendation). Reasonable deadlines will be established.
Merger Review Process Reforms	Reforms slowly processed.	The FTC and DOJ have 90 days to conduct a review and 120 days to implement the reforms.

