

February 2, 2010

FTC Issues Decreased Hart-Scott-Rodino and Interlocking Directorate Thresholds

Hart-Scott-Rodino (HSR) Thresholds

Each year the Federal Trade Commission (FTC) adjusts the reporting thresholds for the HSR premerger notification rules to reflect the previous year's gross national product.

This year, for the first time, the thresholds have been lowered, by approximately three percent. This brings these thresholds to a level only slightly above the 2008 thresholds.

For any acquisition closing on or after Monday, February 22, 2010, the following HSR thresholds will apply:

- **Size-of-Transaction Test:** The size-of-transaction test is satisfied if the merger or acquisition is valued in excess of \$63.4 million but less than \$253.7 million, but a notice and report is required only if the Size-of-Persons test also is met.
- **Size-of-Persons Test:** The size-of-persons test is satisfied if one party to the transaction has total assets or net sales of \$126.9 million or more, and the other party has total assets or net sales of \$12.7 million or more.
- **All transactions** valued in excess of \$253.7 million are reportable, without regard to the Size-of-Persons analysis.

The following table shows all of the changes in various HSR thresholds and other dollar references

Original Threshold	2009 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	\$1,268.7 million

Filing Fees

HSR filing fees have not been increased. Filing fees are based upon the size of the transaction, as follows:

Value of Transaction	Filing Fee
Less than \$126.9 million	\$45,000
\$126.9 million to less than \$634.4 million	\$125,000
\$634.4 million or more	\$280,000

Interlocking Directorates Under Clayton Act Section 8

The dollar thresholds also have been lowered for Section 8 of the Clayton Act, which generally forbids a person from serving as an officer or director of two competing corporations if two thresholds are met. Under the revised thresholds for Section 8, this prohibition may apply when each of the competing corporations has capital, surplus, and undivided profits aggregating more than \$25,841,000, and each corporation's competitive sales are at least \$2,548,100.

What This Means

Parties contemplating merger or acquisition activity are strongly encouraged to consult

antitrust counsel prior to closing to determine whether pre-merger notification is required. The rules governing the calculation of the relevant thresholds and the applicability of particular exemptions to all or part of the transaction are complex.

Note that even if an acquisition or merger does not meet the dollar threshold, and thus is not reportable under the HSR Act, there may be competitive issues that should be addressed before consummation of the transaction.

The FTC and the Department of Justice have the authority under Section 7 of the Clayton Act and Section 5 of the FTC Act to challenge transactions likely to substantially lessen competition.

Our client alerts are for general informational purposes and should not be regarded as legal advice. If you would like additional information or have any questions, please contact:

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