

## FTC Lowers Hart-Scott-Rodino Thresholds for 2010

January 19, 2010

The Federal Trade Commission (FTC) announced today that it will lower the Hart-Scott-Rodino Act (HSR Act) jurisdictional and filing-fee thresholds. The notice will be published in the Federal Register shortly; the new thresholds will become effective 30 days after the date of publication, meaning in late February 2010. The new rules include a decrease in the size-of-transaction test from greater than \$65.2 million to greater than \$63.4 million, meaning that, under the new threshold, acquisitions valued for HSR Act purposes at \$63.4 million or less will not require pre-closing filing and approval. The revised thresholds will apply to all transactions that close **on or after** the effective date.

### New Jurisdictional Thresholds

As a general rule, the HSR Act requires both acquiring and acquired persons in mergers, acquisitions, or certain other transactions to file pre-closing notifications if the following *post-adjustment* jurisdictional thresholds are met:

1. One person has net sales or total assets of at least \$126.9 million
  2. The other person has net sales or total assets of at least \$12.7 million and
  3. As a result of the transaction, the acquiring person will hold an aggregate amount of stock and assets of the acquired person valued at more than \$63.4 million
- OR
4. As a result of the transaction, the acquiring person will hold an aggregate amount of voting securities and assets of the acquired person valued at more than \$253.7 million, regardless of the sales or assets of the acquiring and acquired persons.

Conditions 1 and 2 are generally referred to as the “size-of-person” test, while conditions 3 and 4 are commonly described as the “size-of-transaction” test. Any transaction closing after the revised thresholds go into effect in February 2010 will be subject to the revised thresholds.

The HSR Act rules relating to acquisitions of partnership interests and membership interests in a limited liability company (LLC) remain the same. Only acquisitions of economic control in an LLC or partnership may be reportable. “Control” is defined as having a right to 50% or more of the profits of a partnership or LLC or 50% or more of the assets upon the dissolution of such entity.

## New Filing Thresholds

The table below illustrates the changes to the HSR Act filing thresholds.

| <b>Current Threshold<br/>(in millions)</b> | <b>New “As Adjusted” Threshold<br/>(in millions)</b> |
|--|--|
| \$13.0                                     | \$12.7   |
| \$65.2                                     | \$63.4   |
| \$130.3                                    | \$126.9  |
| \$260.7                                    | \$253.7  |
| \$651.7                                    | \$634.4  |

## New Filing Fee Thresholds

Filing fees are also determined by a threshold test relating to the size of the transaction. While the thresholds have been adjusted, the fees themselves have not changed:

| <b>Value of Transaction</b>                               | <b>Filing Fee</b> |
|---|-------------------|
| Greater than \$63.4 million but less than \$126.9 million | \$45,000          |
| \$126.9 million or greater but less than \$634.3 million  | \$125,000         |
| \$634.3 million or greater                                | \$280,000         |

These changes are being implemented pursuant to the 2000 amendments to Section 7A of the Clayton Act. Section 7A(a)(2) requires the FTC to revise the jurisdictional thresholds annually, based on the change in gross national product, in accordance with Section 8(a)(5). Since the inception of the annual threshold adjustment in 2005, this is the first time that the thresholds have been lowered, which accounts for the fall in GNP.

If you have any question or would like more information on any of the issues raised in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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