

Client Alert

Latham & Watkins
Antitrust and Competition Practice Group

HSR Thresholds to Decrease

On January 19, 2010, the US Federal Trade Commission announced proposed adjusted dollar thresholds for determining when notifications are required under the Hart-Scott-Rodino Act (HSR).¹ Current law requires the FTC to revise the thresholds annually, based on changes in gross national product. This is the first time since passage of HSR that the thresholds will decrease, meaning that slightly smaller transactions will be subject to notification in 2010 than was the case in 2009. The new thresholds will apply to all transactions closing on or after the effective date of the change. The effective date, however, is not yet precisely known: it will depend on several administrative considerations, including exactly when the Commission approves the announcement and the specific Federal Register publication date. The new thresholds will be effective 30 days after the latter date. It is anticipated that the new thresholds will be effective by the end of February.

HSR requires the parties to certain mergers and acquisitions to make pre-closing notifications to the FTC and US Department of Justice. Notified transactions cannot be consummated until the prescribed waiting period has expired. HSR and the extensive HSR Rules promulgated thereunder prescribe thresholds for determining whether a filing is necessary. The "size-of-transaction" threshold applies to the value of the transaction and the "size-of-person" threshold applies to the

revenues and/or total assets of the parties to the transaction, all as determined in accordance with the HSR Rules.

Under the new thresholds, the size-of-transaction test will be met if the value of the transaction exceeds \$63.4 (now \$65.2) million. The size-of-parties test will be met if a party with worldwide sales or total assets exceeding \$126.9 (now \$130.3) million acquires a party with worldwide sales or total assets exceeding \$12.7 (now \$13) million — or vice versa. The size-of-parties test will apply only if the size of the transaction is less than \$253.7 (now \$260.7) million.

The adjustments include:

1. *Decreasing* the minimum size-of-transaction test to \$63.4 million. This means acquisitions valued at less than \$63.4 million will not be reportable.
2. *Decreasing* the size-of-transaction test to \$253.7 million. This means the size-of-person test will *not* apply to acquisitions valued at \$253.7 million or more.
3. *Decreasing* the size-of-persons test to \$12.7 million and \$126.9 million. This means that acquisitions valued at less than \$253.7 million will *not be* reportable unless one person involved in the transaction has total assets or annual net sales of \$12.7 million or more and the other person has total assets or annual net sales of \$126.9 million or more.

The new thresholds for 2010 are set out on the following page.

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Original Threshold	Adjusted Threshold
<i>Size of Transaction</i> \$50 million	\$63.4 million
<i>Size-of-Persons</i> \$10 million and \$100 million	\$12.7 million and \$126.9 million
<i>Size-of-Transaction above which Size-of-Person Test Does Not Apply</i> \$200 million	\$253.7 million
<i>Notification thresholds:</i> \$50 million \$100 million \$500 million 25% of stock worth \$1 billion	\$63.4 million \$126.9 million \$634.4 million \$1,268.7 million
<i>Filing fee thresholds:</i> \$50 million \$100 million \$500 million	\$63.4 million \$126.9 million \$634.4 million
<i>Filing fee dollar amounts:</i> \$45,000 \$125,000 \$280,000	Unchanged

Endnotes

¹ Hart-Scott-Rodino Antitrust Improvements Act of 1976 (as amended), 15 U.S.C. §18A.

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