



## FTC ISSUES REVISED 2009 HSR THRESHOLDS

### *“Size of Transaction Test” To Be Increased to \$65.2 Million*

As required by statute, on January 13, 2009 the Federal Trade Commission published in the *Federal Register* increases to the filing and other dollar-denominated thresholds contained in the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). These increases are made annually based on changes in the U.S. gross national product for the fiscal year ending September 30 and will apply to all transactions that close on or after February 12, 2009.

**General Threshold to Determine Initial HSR Filing Obligation.** Effective February 12, 2009, the minimum notification threshold under the HSR Act will increase from \$63.1 million to \$65.2 million. Thus, an acquisition will potentially trigger an HSR filing only if, as a result of the acquisition, the acquirer would hold assets, voting securities and/or non-corporate interests of the acquired person valued in excess of \$65.2 million. The revised 2009 thresholds are as follows:

Threshold Type	2008 Threshold	2009 Threshold (Effective for transactions closing on or after February 12, 2009)
Minimum “Size-of-Transaction” test	\$63.1 million	\$65.2 million
Alternative “Size-of-Transaction” test requiring HSR filing regardless of “Size-of-Person”	\$252.3 million	\$260.7 million
Minimum “Size-of-Person” Test (applicable to transactions valued at less than the “Size-of-Transaction” test)	Person #1: \$12.6 million Person #2: \$126.2 million	Person #1: \$13.0 million Person #2: \$130.3 million

**Additional Notification Thresholds.** As stated above, an acquisition that results in an acquirer holding more than \$65.2 million (as of February 12, 2009) worth of the assets or stock of an acquired person will cross the first of five staggered “notification thresholds.” The rules identify four additional thresholds that determine whether a subsequent acquisition from the same acquired person of voting securities will require additional HSR filings. Those additional notification thresholds are revised as follows:

Original Additional Notification Threshold	2008 Additional Notification Threshold	2009 Additional Notification Threshold
\$100 million	\$126.2 million	\$130.3 million
\$500 million	\$630.8 million	\$651.7 million
25% of the Voting Securities of an issuer	(if the 25% stake is valued at greater than \$1.2615 billion)	(if the 25% stake is valued at greater than \$1.3034 billion)
50% of the Voting Securities of an issuer	(if the 50% stake is valued at greater than \$63.1 million)	(if the 50% stake is valued at greater than \$65.2 million)

In effect, these staggered thresholds are designed to act as exemptions to relieve parties of the burden of making additional filings each time additional shares of the same person are

acquired. Once a filing is made, the acquiring person is allowed one year from the end of the waiting period to cross the threshold stated in the filing; if it reaches the stated threshold within that period, it may continue acquiring shares up to the next threshold for five years from the end of the waiting period. These additional notification thresholds apply only to acquisitions of voting securities.

**Filing Fees.** Although the three filing fee amounts have not changed, as a result of the GNP-indexing adjustments outlined above the break points used in calculating the three-tiered HSR filing fees have increased as follows:

Transaction Size	Filing Fees <i>(Effective for filings made on or after February 12, 2009)</i>
\$65,200,000 to less than \$130,300,000	\$45,000
\$130,300,000 to \$651,700,000	\$125,000
Transactions in Excess of \$651,700,000	\$280,000

Note that while the new thresholds for determining the requirement to file are effective for all transactions **closing** on or after February 12, 2009, the new thresholds for determining the filing fee calculation are effective for all filings first **made** on or after February 12, 2009.

The FTC's announcement of the above changes is located on the FTC's website at [www.ftc.gov/os/2009/01/P859910sect7aclaytonact.pdf](http://www.ftc.gov/os/2009/01/P859910sect7aclaytonact.pdf).

### **What to Do?**

Companies should be mindful of the newly increased dollar thresholds in assessing the filing requirements of the HSR Act for two basic reasons. First, consult the new thresholds to avoid making a filing that is not required under the Act's revised \$65.2 million and subsequent notification thresholds. Second, since the new thresholds significantly reduce the filing fee for many transactions, be sure to use the new filing fees. The use of the old thresholds will result in paying an incorrect and artificially inflated filing fee.

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*This Alert has been prepared for general informational purposes only and is not intended as legal advice. Antitrust counsel should be consulted both prior to consummating any transaction, to ensure that the appropriate HSR Act filing thresholds have been considered, and prior to filing any HSR Notification Form, to ensure that all technical and other aspects of the HSR Act are satisfied.*