



FTC REDUCES HSR THRESHOLDS

“Size of Transaction” Test Dropped to \$63.4 Million *First ever downward adjustment of HSR Thresholds*

As required by statute, the Federal Trade Commission has revised the filing and other dollar-denominated thresholds contained in the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). These adjustments are made annually based on changes in the U.S. gross national product for the fiscal year ending September 30. In a notable sign of recent times, these changes represent the first downward adjustment to the thresholds, in response to the depressed economic environment over the most recent fiscal year. These revisions were published in the *Federal Register* on January 21, 2010 and take effect on February 20, 2010.

General Threshold to Determine Initial HSR Filing Obligation. Effective February 20, 2010, the minimum notification threshold under the HSR Act will decrease from \$65.2 million to \$63.4 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 \$63.4 million. The complete revised 2010 initial thresholds are as follows:

Threshold Type	2009 Threshold	2010 Threshold (Effective for transactions closing on or after February 20, 2010)
Minimum “Size-of-Transaction” test	\$65.2 million	\$63.4 million
Alternative “Size-of-Transaction” test (requiring HSR filing regardless of “Size-of-Person” test below)	\$260.7 million	\$253.7 million
“Size-of-Person” Test (applicable only to transactions valued at less than the “Alternative Size-of-Transaction” test above)	Person #1: \$13.0 million Person #2: \$130.3 million	Person #1: \$12.7 million Person #2: \$126.9 million

To summarize, applying these new thresholds results in the following reporting obligations:

Transaction Size	HSR Reporting Obligation?
\$63.4 million or less	No
Between \$63.4 million and \$253.7 million	Yes, but only if one person’s net sales or total assets exceed \$126.9 million and the other’s exceed \$12.7 million
\$253.7 million or more	Yes

Additional Notification Thresholds. As stated above, as of February 20, 2010, an acquisition that results in an acquirer holding more than \$63.4 million worth of the assets, stock or non-corporate interests 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 have been revised as follows:

Original Additional Notification Threshold	2009 Additional Notification Threshold	2010 Additional Notification Threshold
\$100 million	\$130.3 million	\$126.9 million
\$500 million	\$651.7 million	\$634.4 million
25% of the Voting Securities of an issuer	(if the 25% stake is valued at greater than \$1.3034 billion)	(if the 25% stake is valued at greater than \$1.2687 billion)
50% of the Voting Securities of an issuer	(if the 50% stake is valued at greater than \$65.2 million)	(if the 50% stake is valued at greater than \$63.4 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 amounts of the three filing fees under the HSR Act have not changed, as a result of the GNP-indexing adjustments outlined above, new break points will be used in calculating the three-tiered filing fee schedule as follows:

Transaction Size	Filing Fees (Effective for filings made on or after February 20, 2010)
\$63,400,000 to less than \$126,870,000	\$45,000
\$126,870,000 to \$634,400,000	\$125,000
Transactions in Excess of \$634,400,000	\$280,000

Note that while the new thresholds for determining the requirement to file under the HSR Act are effective for all transactions **closing** on or after February 20, 2010, the new thresholds for determining the applicable filing fee are effective for all filings first **made** on or after February 20, 2010.

The FTC’s announcement of the above changes is located on the FTC’s website at <http://www.ftc.gov/opa/2010/01/hsr-safeharbor.shtm>.

What to Do?

For two basic reasons, companies should be mindful of the decreased dollar thresholds in assessing filing obligations of the HSR Act -- particularly for deals with a filing or closing date that straddles February 20, 2010. First, consult the new thresholds to avoid missing a filing that is now required under the HSR Act's reduced \$63.4 million and subsequent notification thresholds. Second, since the revised thresholds effectively increase the filing fee for many transactions, be sure to apply the new thresholds, as the use of the old thresholds may result in paying an incorrect 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.