

February 23, 2010

FTC Lowers HSR Notification Thresholds for 2010

On January 19, 2010, the Federal Trade Commission (FTC) announced its annual adjustment to the pre-merger notification filing thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (HSR), and **for the first time in history, the HSR thresholds were decreased.** The new thresholds became effective February 22, 2010.

Transactions that close on or after February 22, 2010 are subject to the following new thresholds:

Threshold Test	Original Threshold	2009 Adjusted	2010 Adjusted
Size-of-Transaction	\$50 million	\$65.2 million	\$63.4 million
Size-of-Person	\$10 million and \$100 million	\$13 million and \$130.3 million	\$12.7 million and \$126.9 million
Size-of-Transaction at which the Size-of-Person test no longer applies	\$200 million	\$260.7 million	\$253.7 million

Application of the Thresholds

To determine the “value” of the transaction for purposes of the thresholds, the acquiring person needs to determine the value of the voting securities, assets and non-corporate assets of the target company that such acquiring person will acquire or hold as a result of the transaction (and in certain circumstances prior transactions by the acquiring person need to be aggregated with the current transaction). Note that the “value” for HSR purposes is not always the purchase price, because there are specific rules for determining “value” under the HSR rules.

- If the transaction “value” is greater than \$253.7 million, the pre-merger notification filing requirements and the applicable waiting period will apply to the transaction regardless of the size of the parties involved unless an exemption is available.
- If the transaction “value” is less than \$253.7 million but greater than \$63.4 million, the pre-merger notification filing requirements and waiting period will apply if the acquirer or target company has net sales or total assets of at least \$126.9 million and the other person in the transaction has net sales or total assets greater than \$12.7 million unless an exemption is available.
- If the “value” of the transaction is \$63.4 million or less, the transaction is not subject to the pre-merger notification filing requirements and waiting period.

Filing Fees

The filing fees have remained the same but the thresholds have decreased:

2010 Threshold	Filing Fee
Size-of-Transaction "value" is greater than \$63.4 million but less than \$126.9 million	\$45,000
Size-of-Transaction "value" is equal to or greater than \$126.9 million but less than \$634.4 million	\$125,000
Size-of-Transaction "value" is equal to or greater than \$634.4 million	\$280,000

For more information, please contact:

[W. Scott Wallace](#)

214.651.5587

scott.wallace@haynesboone.com

[Jennifer Thoman Wisinski](#)

214.651.5330

jennifer.wisinski@haynesboone.com

[David J. Colletti Jr.](#)

214.651.5017

david.colletti@haynesboone.com