

## FTC Announces Lower Hart-Scott-Rodino Notification Thresholds Effective as of February 22, 2010

On January 19, 2010, the Federal Trade Commission (“FTC”) announced new thresholds for pre-merger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“the HSR Act”). Most significantly, the FTC announced that the minimum “size-of-transaction” threshold has fallen from \$65.2 million to \$63.4 million. The FTC revises the thresholds annually based on changes in the gross national product and this is the first year in which the thresholds have been revised downward. The new thresholds will take effect on Monday, February 22, 2010.

The HSR Act requires that certain acquisitions must be reported to the Department of Justice and the FTC and that a waiting period must be observed before the acquisitions may be consummated. Under the revised thresholds, premerger notification filings may be required in acquisitions involving securities or assets valued at \$63.4 million or more (the minimum size-of-transaction threshold) if the acquiring or acquired party has at least \$12.7 million in assets or sales and the other party to the transaction has at least \$126.9 million in assets or sales (the size-of-person thresholds). Filings may also be required in transactions involving securities or assets valued at \$253.7 million or more regardless of whether the size-of-person thresholds are met.

Below is a table provided by the FTC setting forth the full set of HSR Act dollar thresholds that will be effective as of February 22, 2010:

Original Threshold	Adjusted Threshold
\$10 million	\$12.7 million
\$50 million	\$63.4 million
\$100 million	\$126.9 million
\$110 million	\$139.6 million
\$200 million	\$253.7 million
\$500 million	\$634.4 million
\$1 billion	\$1,268.7 million

Because the size-of-transaction thresholds are also used to determine the appropriate HSR Act filing fees, the new thresholds will mean higher filing fees in some cases. As of February 22, for transactions valued above \$63.4 million but below \$126.9 million, the HSR filing fee will be \$45,000; for transactions valued at or above \$126.9 million but below \$634.4 million, the filing fee will be \$125,000; and for transactions valued at or above \$634.4 million, the filing fee will be \$280,000.

As this is the first instance in which the HSR thresholds have been adjusted downward, it raises some questions as to how the HSR rules will be applied to companies who submit HSR notifications prior to February 22, 2010, for the purchase of voting securities that may occur after February 22. In anticipation of such questions, the FTC today provided to us the following informal guidance (emphasis added):

The threshold you use for [Rule] 802.21 [governing acquisitions of voting securities not meeting or exceeding a greater notification threshold] is whatever threshold is effective at the time of the subsequent acquisition. So if you file today to cross the \$65.2 MM threshold, you have one year from the end of the waiting period to cross the \$63.4 MM level, even though that threshold was \$65.2 MM at the time you filed (assuming that you make the acquisition after the 2010 thresholds are effective). You can then acquire up to \$126.9 MM until the 2011 thresholds are effective, even though that threshold was \$130.3 MM at the time you filed.

If you have any questions about the new HSR thresholds or the application of the HSR rules more generally, please contact any of your regular U.S. antitrust contacts or any of our partners and counsel listed under Antitrust and Competition under the “Practices” section of our website at <http://www.clearygottlieb.com>.

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