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FTC Announces Decreased Hart-Scott-Rodino Thresholds for 2010

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) requires that parties contemplating mergers, acquisitions and certain other transactions that meet the jurisdictional thresholds must provide pre-merger notice of the proposed transaction to the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice. The parties must then wait a specified period of time (usually 30 days) before consummating the transaction to allow the agencies to perform a preliminary antitrust evaluation. Failure to file an HSR Act notification could result in a monetary penalty for each day the violation continues or court-ordered compliance.

Section 7A of the Clayton Act mandates that the FTC adjust the HSR Act thresholds annually, based on changes in the Gross National Product (GNP). On January 19, 2010, the FTC announced its annual adjustments to the HSR Act thresholds. For the first time in history, the FTC decreased the thresholds from previous levels due to the decline in GNP. The FTC published the revised thresholds in the Federal Register on January 21, 2010, and the new thresholds will go into effect on February 22, 2010.

Adjusted Reporting Thresholds

Pre-merger notifications are required if both the "size of transaction" and "size of person" thresholds are met and no exemption is available. As shown in the table below, the FTC established thresholds in 2009 that required notification if an acquisition of voting securities, assets or non-corporate interests (i) had a value of more than \$65.2 million, and if (ii) the acquiring or acquired party had annual net sales or total assets of \$13.0 million or more and the other party had annual net sales or total assets of \$130.3 million or more. Transactions valued at more than \$260.7 million were reportable regardless of the "size of person" test.

Under the new decreased thresholds, pre-merger notification is required if (i) the transaction is valued at more than \$63.4 million and (ii) the parties to the transaction have annual net sales or total assets of at least \$12.7 million and \$126.9 million. Transactions valued at more than \$253.7 million must be reported regardless of the "size of person" test.

	New 2010 Thresholds	Previous 2009 Thresholds
	A transaction is reportable if:	A transaction is reportable if:
Size of Transaction Test	The value of the transaction is more than \$63.4 million	The value of the transaction is more than \$65.2 million
Size of Person Test	One party to the transaction has annual net sales or total assets of at least \$12.7 million and the other has annual net sales or total assets of at least \$126.9 million	One party to the transaction has annual net sales or total assets of at least \$13.0 million and the other has annual net sales or total assets of at least \$130.3 million
	"Size of person" is irrelevant if the transaction is valued at more than \$253.7 million	"Size of person" is irrelevant if the transaction is valued at more than \$260.7 million

Any transaction that closes on or after February 22, 2010, will be subject to the new decreased thresholds. Corresponding adjustments will be made to references to these dollar amounts throughout the HSR Act, including the provisions regarding certain exemptions, to conform to the new thresholds.

Adjusted Filing Fee Thresholds

The HSR Act also requires acquiring parties to pay a filing fee in connection with any required notification filing. Like the reporting requirements, the filing fees are determined by a threshold test based upon the value of the transaction, and the thresholds are adjusted each year in accordance with the GNP. Pursuant to the adjustments effective on February 22, the filing fees will remain the same, but the corresponding thresholds will decrease as shown in the table below.

Filing Fee	New 2010 Thresholds	Previous 2009 Thresholds
\$45,000	More than \$63.4 million but less than \$126.9 million	More than \$65.2 million but less than \$130.3 million

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\$125,000	\$126.9 million or more but less than \$634.4 million	\$130.3 million or more but less than \$651.7 million
\$280,000	\$634.4 million or more	\$651.7 million or more

Adjusted Interlocking Directorate Thresholds

The FTC also announced new thresholds for evaluating interlocking directorates under Section 8 of the Clayton Act. Section 8 prohibits a person from serving as a director or officer of two competing corporations if certain thresholds are met. Like the HSR Act reporting requirements, the FTC is required to adjust Section 8 thresholds annually based on changes in the GNP. Pursuant to the recently adjusted thresholds, the Section 8 prohibition applies if each competing corporation has more than \$25,841,000 (reduced from \$26,161,000 in 2009) in capital, surplus and undivided profits, but it does not apply if either corporation has less than \$2,584,100 (reduced from \$2,616,100 in 2009) in competitive sales.

These Section 8 adjustments were effective immediately upon their publication in the Federal Register on January 21, 2010.

Contact Info

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