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FOR THE FIRST TIME, FTC LOWERS THRESHOLDS FOR HSR PRE-MERGER NOTIFICATIONS AND INTERLOCKING DIRECTORATES

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On January 19, 2010, the Federal Trade Commission announced its first-ever decreases to pre-merger notification thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as well as new 2010 thresholds for determining whether parties trigger the prohibition against interlocking directorates under Section 8 of the Clayton Act.

Pre-Merger Notification Thresholds

The decreases of pre-merger notification thresholds result from amendments to the HSR Act passed by the U.S. Congress in 2000 that require the FTC to adjust the thresholds annually for change in U.S. gross national product. This is the first year since the amendments were adopted that the U.S. GNP has declined and, accordingly, the first time that the thresholds have been decreased.

The FTC published the revised thresholds for HSR pre-merger notifications in the Federal Register on January 21, 2010. The revised thresholds will become effective on February 22, 2010. Any transactions completed and any HSR pre-merger notifications filed on or after February 22, 2010 must comply with the new notification thresholds.

The most significant change is that the minimum "size-of-transaction" threshold will be lowered from \$65.2 million to \$63.4 million, which means that acquisitions below this threshold will not be reportable.

For 2010, the new HSR dollar thresholds will be:

Threshold	2009 Adjusted Threshold
Minimum Size-of-Transaction	\$63.4 million
Size-of-Persons Test	\$12.7 million and /\$126.9 million
Size-of-Transaction above which Size-of-Persons Test Does Not Apply	\$253.7 million

The adjustments also apply to certain other HSR Act thresholds and exemptions. Although the HSR filing fee amounts did not change, the size-of-transaction thresholds, upon which the filing fee is based, decreased.

The filing fees under the new thresholds will be:

2009 Size-of-Transaction Threshold	Filing Fee
Value of transaction greater than \$63.4 million, but less than \$126.9 million	\$45,000
Value of transaction \$126.9 million or greater, but less than \$634.4 million	\$125,000
Value of transaction \$634.4 million or Greater	\$280,000
25% of an issuer's voting securities if valued in excess of \$1,268.7 million	\$280,000
50% of an issuer's voting securities if valued at greater than \$63.4 million	\$45,000

The new thresholds are currently expected to remain in effect until the next annual adjustment in the first quarter of 2011.

Thresholds for Interlocking Directorates

In a related development, the FTC also revised the dollar thresholds for evaluating interlocking directorates under Section 8 of the Clayton Act. In certain circumstances, federal antitrust law prohibits an individual from serving as a director or officer of two competing business entities if each entity has capital, surplus, and undivided profits aggregating more than \$10 million, with an exception that an interlock is not covered if the competitive sales of either entity are less than a *de minimis* threshold, which is currently \$1,000,000. Similar to the HSR Act, Section 8(a)(5) of the Clayton Act requires the FTC to revise these thresholds annually, based on changes in the U.S. GNP, and this is also the first year since the amendments were adopted that these thresholds have been decreased as well.

The HSR pre-merger notification thresholds are only a part of the analysis used in determining whether an HSR filing will be required with respect to a specific transaction, and the analysis under Section 8 of the Clayton Act relating to interlocking directorates is also similarly complex and dependent on many considerations.