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Lower Thresholds For Pre-Merger Antitrust Notifications Now In Effect

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Effective today, lower thresholds are in effect for determining whether pre-merger notifications are required to be made with the Federal Trade Commission (FTC) and the Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR). As further explained below, the thresholds for reporting transactions based on the “size-of-transaction” test and the “size-of-persons” test have been slightly reduced. No changes were made to the related HSR filing fees.

Transactions less than or equal to \$63.4 million – No HSR filings are required. This represents a slight decline from the \$65.2 million threshold previously in effect.

Transactions in excess of \$63.4 million but less than or equal to \$253.7 million – HSR filings are required only if the “size-of-persons” test is triggered, which typically occurs if the acquiring or acquired person has annual net sales or total assets of \$126.9 million or more, and the other party to the transaction has annual net sales or total assets of \$12.7 million or more.

Transactions in excess of \$253.7 million – HSR filings are required regardless of the “size-of-persons” test.

The HSR pre-merger notification requirements apply to transactions involving the acquisition of voting securities, assets, or non-corporate interests subject to certain exemptions and additional complex rules. Parties contemplating transactions in these ranges should discuss the applicability of HSR with counsel early in a transaction.



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The FTC is required to revise these thresholds annually based on a U.S. gross national product (GNP) index. Since 2000 the thresholds have increased every year, with this year's decline resulting from the decline in GNP due to the economic recession. The effect of the decline is that slightly lower-value transactions will be subject to the reporting requirements. However, whether these declines result in a material increase in pre-merger notification activity for 2010 is itself a function of the trends in deal valuation and transaction activity.

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