

In an Historic First: Hart-Scott-Rodino Jurisdictional Thresholds Will be Lowered

January 27, 2010

In an unprecedented first, effective February 22, 2010, the notification thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 USC §18a (2001), (the “HSR Act” or the “Act”) will be lowered. The jurisdictional thresholds are adjusted annually under the indexing required by the 2000 amendments to the Act, which require the Federal Trade Commission to revise the thresholds annually based on the change in gross national product.

As a result of the 2010 revisions to the HSR Act’s jurisdictional thresholds, the basic notification threshold for all transactions will be decreased from \$65.2 million to \$63.4 million.

Unless otherwise exempt, an entity that is not controlled by any other entity or individual (a “Person”) that, as a result of an acquisition, will hold voting securities, assets, or interests in an unincorporated entity of any other Person valued in excess of the HSR Act’s jurisdictional threshold may be required to file notification under the Act and to observe the applicable waiting period before consummating the transaction.

Transactions valued at \$253.7 million or less (\$260.7 million prior to February 22, 2010) are not subject to the HSR Act unless the parties also meet the size-of-person thresholds. Under the revised thresholds, the size-of-person thresholds will be met where a Person with annual net sales or total assets of \$126.9 million acquires a Person with annual net sales or total assets of \$12.7 million, or vice-versa.

In each instance where an acquiring Person files under the Act, the acquired person is also required to submit a filing. The purpose of the HSR filing is to enable antitrust regulators to review the transaction and investigate and address potential antitrust violations prior to its consummation.

The following charts provide a summary of the HSR Act’s threshold adjustments:

SIZE-OF-TRANSACTION		Old Threshold	New Threshold (Effective February 22, 2010)
Jurisdictional Threshold	Basic Notification	\$65.2 Million	\$63.4 Million

\$130.3 Million	\$126.9 Million	
Subsequent Notification Thresholds	\$651.7 Million	\$634.4 Million
	25% (if value exceeds \$1.3034 billion)	25% (if value exceeds \$1.2687 billion)
	50% (where value exceeds \$65.2 million)	50% (where value exceeds \$63.4 million)

SIZE-OF-PERSON		Old Threshold	New Threshold (Effective February 22, 2010)
Jurisdictional Threshold	Size-of-Person Thresholds	\$13 Million	\$12.7 Million
		\$130.3 Million	\$126.9 Million
	Size-of-Person Inapplicable Where Transaction Exceeds	\$260.7 Million	\$253.7 Million

The dollar amount of the filing fees payable to the Federal Trade Commission with HSR Act filings are not subject to indexing; however, the thresholds applicable to the statutory filing fees do adjust with indexing. As of February 22, 2010, the schedule for filing fees will be as follows:

Transaction Size	Filing Fee
Greater than \$63.4 million but less than \$126.9 million	\$45,000
\$126.9 million or greater but less than \$634.4 million	\$125,000
\$634.4 million or greater	\$280,000

The antitrust agencies take strict application of the requirements of the HSR Act very seriously. Correct application of the HSR Act can be complex and typically requires a detailed and careful analysis of a transaction. Proskauer's HSR team has extensive experience with the issues presented under the HSR Act. If you have any questions concerning a potential HSR filing requirement please contact one of the lawyers identified in this publication.

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