

***Revised Jurisdictional and Exemption-
Related Thresholds, and Maximum Civil
Penalties, under the HSR Act***

January 13, 2009

The Federal Trade Commission (“FTC”) recently published two notices amending (i) jurisdictional and exemption-related thresholds under, and (ii) maximum civil penalties for violations of, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”).

I. Jurisdictional and Exemption-Related Thresholds

Today, the FTC published a notice to amend the jurisdictional and exemption-related thresholds contained in the HSR Act and the premerger notification rules. These amendments represent the annual upward adjustment of these thresholds, based upon changes in the GNP.

The initial threshold for a notification under the HSR Act will increase from \$63.1 million to \$65.2 million. For transactions valued between \$65.2 million and \$260.7 million (up from \$252.3 million), the size-of-the-person test will continue to apply. That test will now make the transaction reportable only where one party has sales or assets of at least \$130.3 million, up from \$126.2 million, and the other party has sales or assets of at least \$13 million, up from \$12.6 million. All transactions valued in excess of \$260.7 million are reportable without regard to the size of the parties.

The new thresholds will apply to any transaction that will close on or after February 12, 2009.

On the following page is a summary chart of the threshold adjustments.

HSR Threshold Adjustments

PRIOR THRESHOLD	REVISED THRESHOLD
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Size-of-the-transaction test

in excess of \$63.1 million	in excess of \$65.2 million (filing fee remains \$45,000)
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Size-of-the-person test

\$12.6 million/\$126.2 million	\$13 million/\$130.3 million
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Transaction value above which size-of-the-person test is inapplicable

\$252.3 million	\$260.7 million
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In addition to adjusting upward the \$63.1 million initial threshold for HSR notification, the amendments will adjust all subsequent notification thresholds as follows:

NOTIFICATION LEVELS

in excess of \$50 million	in excess of \$65.2 million (filing fee remains \$45,000)
\$100 million	\$130.3 million (filing fee remains \$125,000)
\$500 million	\$651.7 million (filing fee remains \$280,000)
25% of total outstanding shares worth more than \$1 billion	25% of total outstanding shares worth more than \$1,303.4 million
50% of total outstanding shares worth more than \$50 million	50% of total outstanding shares worth more than \$65.2 million

These notification threshold adjustments also adjust upward thresholds applicable to certain exemptions, such as those involving the acquisition of foreign assets or voting securities of foreign issuers.

II. Maximum Civil Penalties

On Friday, January 9, 2009, the FTC published a notice of upward adjustment of the maximum civil penalty for a violation of the HSR Act, from \$11,000 to \$16,000 per day during which the person is in violation. **The new maximum civil penalty is effective February 9, 2009.**

If you have any questions about the matters covered in this memorandum, please contact any of the lawyers listed below or your regular Davis Polk contact:

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