

## 2007 Hart-Scott-Rodino Threshold Revisions

January 25, 2007

The Federal Trade Commission (“FTC”) recently announced revised thresholds for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). The new thresholds will take effect and apply to all transactions consummated on or after February 21, 2007.<sup>1</sup> The HSR Act requires all parties contemplating certain mergers or acquisitions, which meet or exceed the jurisdictional thresholds, to notify the FTC and Department of Justice Antitrust Division (“DOJ”) and to wait statutorily prescribed periods of time prior to consummating the transactions.

The revisions to the jurisdictional thresholds are required pursuant to a year 2000 amendment to the HSR Act which requires the FTC annually to adjust the \$50 million and \$200 million size-of-transaction threshold tests, and the \$10 million and \$100 million size-of-person threshold tests, based on the change in the gross national product. Under the revised thresholds:

- All acquisitions that will result in an acquirer holding an aggregate total amount of the assets, voting securities, and/or interests in non-corporate entities of the acquired party in excess of \$239.2 million will be reportable, unless otherwise exempted.

- No transaction resulting in an acquiring person holding \$59.8 million or less of the assets, voting securities, and/or interests in non-corporate entities of the acquired party will be reportable.
- Acquisitions valued between these thresholds are reportable based on the size of the acquiring and acquired persons. Generally, the size-of-person test will require that one party to the transaction have sales or assets of \$119.6 million or more (formerly \$113.4 million) and the other party have sales or assets of \$12.0 million or more (formerly \$11.3 million).

The revisions will not affect the premerger notification filing fees, but will change the jurisdictional thresholds applicable to each fee. Thus, a \$45,000 filing fee will be required for reportable transactions valued between \$59.8 million and \$119.6 million, a \$125,000 filing fee will be required for reportable transactions valued at \$119.6 million or more but less than \$597.9 million, and a \$280,000 filing fee will apply to reportable transactions valued at \$597.9 million or more.

The principal revisions to the jurisdictional thresholds are summarized on the following page.

| <b>Threshold Test</b>                          | <b>Current Threshold</b>   | <b>Revised Threshold</b>   |
|--|--|--|
| <b>Size-of-transaction threshold</b>           | Premerger notification may be required where acquiring person will acquire assets, voting securities, and/or interests in non-corporate entities valued in excess of \$56.7 million, unless otherwise exempted.  | Valued in excess of \$59.8 million.  |
| <b>Size-of-person threshold</b>                | Generally, one party to the transaction must have sales or assets valued at \$113.4 million or more and the other party must have sales or assets valued at \$11.3 million or more.  | Valued at \$119.6 million or more and \$12.0 million or more.  |
|  | Transactions valued in excess of \$226.8 million are not subject to the size-of-person threshold and are reportable unless otherwise exempted.   | Valued in excess of \$239.2 million.   |
| <b>Notification thresholds</b>                 | Premerger notification required where acquiring person will acquire assets, voting securities, and/or interests in non-corporate entities valued in excess of \$56.7 million but less than \$113.4 million, unless otherwise exempted.   | Valued in excess of \$59.8 million but less than \$119.6 million.<br><br>Filing fee remains \$45,000.  |
|  | Premerger notification required where acquiring person will acquire assets, voting securities, and/or interests in non-corporate entities valued at \$113.4 million or more but less than \$567.0 million, unless otherwise exempted.  | Valued at \$119.6 million or more but less than \$597.9 million.<br><br>Filing fee remains \$125,000.  |
|  | Premerger notification required where acquiring person will acquire assets, voting securities, and/or interests in non-corporate entities valued at \$567.0 million or more, unless otherwise exempted.  | Valued at \$597.9 million or more.<br><br>Filing fee remains \$280,000.  |
| <b>Voting security notification thresholds</b> | An acquirer of voting securities must notify the FTC and DOJ of the notification threshold that will be crossed as a result of the acquisition of voting securities. The notification thresholds are \$56.7 million, \$113.4 million, \$567.0 million, 25% (if the value of the voting securities to be acquired is greater than \$1.13 billion) or 50%. | The revised notification thresholds are \$59.8 million, \$119.6 million, \$597.9 million, 25% (if the value of the voting securities to be acquired is greater than \$1,195.8 million) or 50%. |

In addition, all references to jurisdictional thresholds contained in the Hart-Scott-Rodino Rules and Regulations<sup>2</sup> will also be revised, where indicated by the term “(as adjusted),” as follows:

| <b>Original Threshold</b> | <b>Adjusted Threshold</b> |
|---------------------------|---------------------------|
| \$10 million              | \$12.0 million            |
| \$50 million              | \$59.8 million            |
| \$100 million             | \$119.6 million           |
| \$110 million             | \$131.5 million           |
| \$200 million             | \$239.2 million           |
| \$500 million             | \$597.9 million           |
| \$1 billion               | \$1,195.8 million         |

If you have questions or would like further information about this announcement, please contact Scott Perlman, Jay Brown, or Michael Bodosky by telephone (202-263-3000), by fax (202-263-3300), or by email ([sperlman@mayerbrownrowe.com](mailto:sperlman@mayerbrownrowe.com), [jsbrown@mayerbrownrowe.com](mailto:jsbrown@mayerbrownrowe.com), or [mbodosky@mayerbrownrowe.com](mailto:mbodosky@mayerbrownrowe.com)).

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Mayer, Brown, Rowe & Maw LLP’s Washington D.C. office is located at 1909 K Street, N.W., Washington, D.C. 20006-1101. Our website is located at [www.mayerbrownrowe.com](http://www.mayerbrownrowe.com).

<sup>1</sup> 72 Fed Reg 2692 (January 22, 2007).

<sup>2</sup> 16 CFR 801-803.

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