

LEGAL UPDATE

March 2010 By: John J. Crowe and Durre S. Hanif

HART-SCOTT-RODINO TRANSACTION THRESHOLDS DECREASE

The annual revised jurisdictional and filing fee thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) have been announced by the Federal Trade Commission (the “FTC”) and are now effective. In an unprecedented move, the new thresholds have decreased for 2010. The revised thresholds became effective February 22, 2010, and will apply to all covered transactions that are consummated on or after such date.

THE HSR ACT

The HSR Act is a set of amendments to the antitrust laws of the United States, adopted to provide the Federal government with the opportunity to review the potential effects on competition of certain mergers, acquisitions or other consolidations that meet certain requirements. Before certain mergers, tender offers or other acquisition transactions can close, both parties must file a “Notification and Report Form,” describing the proposed transaction and the parties to it, with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice. Upon the filing, a 30-day waiting period ensues during which those regulatory agencies may request further information in order to enable them to assess whether the proposed transaction violates the antitrust laws of the United States. It is unlawful to close the transaction during the waiting period.

The filing requirement is triggered only if the value of the transaction and, in some cases, the size of the parties, exceed certain dollar thresholds, which are adjusted over time.

NEW THRESHOLD REQUIREMENTS

Under the new requirements, in order for a notification filing to be required under the HSR Act, a transaction must meet the following tests:

- **The Size-of-the-Person Test.** One party’s control group has total assets or annual net sales of at least \$126.9 million (down from \$130.3 million in 2009), and another party’s control group has total assets or annual net sales of at least \$12.7 million (down from \$13 million in 2009). If the transaction is valued at

more than \$253.7 million (down from \$260.7 million in 2009), the Size-of-the Person Test does not apply and an HSR filing will be required.

- **The Size-of-the-Transaction Test.** This test is met if the buyer will hold an aggregate amount of stock, non-corporate interests, and/or assets of the seller valued at more than \$63.4 million (down from \$65.2 million in 2009) as a result of the consummation of the transaction.

NEW FILING FEES

As of February 22, 2010, HSR filing fees will be as follows:

- \$45,000 for transactions valued greater than \$63.4 million but less than \$126.9 million;
- \$125,000 for transactions valued at \$126.9 million or greater but less than \$634.4 million; and
- \$280,000 for transactions valued greater than \$634.4 million.

The HSR thresholds are only one part of the analysis to determine whether an HSR filing will be required, and certain exemptions must be carefully considered before concluding that a transaction is reportable. There are also numerous regulations and interpretations that impact how the tests are applied for each transaction. The foregoing is intended to summarize the recent HSR changes and is not intended to provide legal advice. If you have any questions regarding this topic please contact an attorney in the Pryor Cashman Corporate Department.

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The foregoing is intended to summarize the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”), and does not constitute legal advice. Please contact the Pryor Cashman attorney with whom you work with any questions you may have. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact John Crowe at (212) 326-0178 or Durre Hanif at (212) 326-0128.

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John J. Crowe joined Pryor Cashman's Corporate Group in 1989 and has been a partner since 1997. John's practice focuses on mergers and acquisitions, corporate financing transactions (including equity and debt), securities and commercial transactions. He has wide-ranging experience in the private equity and venture capital areas for both established and newly-formed businesses.

John advises clients on a wide variety of matters, including joint ventures, strategic alliances, business formation, contracts and limited liability issues. He also provides counseling on general corporate and day-to-day matters.

John's clients include start-up entities, corporations, limited liability companies, partnerships and joint ventures in a various industries, including media, technology, apparel, publishing, logistics, medical supplies, retail, restaurants, entertainment and advertising.

John graduated from St. John's University School of Law in 1987 and was Associate Editor of the St. John's Law Review.



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Durre S. Hanif is an associate in Pryor Cashman's Corporate Group, where her practice covers general corporate matters.

Durre is a 2009 graduate of Benjamin N. Cardozo School of Law, where she was a Cardozo Scholar, Public Service Scholar, and a member of the Arts and Entertainment Law Journal. While in law school, Durre served as an oralist and teaching assistant for the Willem C. Vis International Arbitration Moots in Vienna and Hong Kong. As a participant in the school's Mediation Clinic, Durre also has experience mediating in the New York State Unified Court System and for the EEOC.

Durre received her Honors B.A. from Trinity College, University of Toronto in 2004, where she was a recipient of the National Book Award and the Plaque for Exemplary Service to the University Community.

In her free time, Durre volunteers to help promote literacy and women's rights in South Asia.