

Mergers & Acquisitions/Antitrust ADVISORY

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FTC Lowers Thresholds for HSR Filings and Interlocking Directorates

On January 19, 2010, the Federal Trade Commission (FTC) announced a three-percent reduction in the jurisdictional thresholds for pre-merger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") and for interlocking directorate calculations under Section 8 of the Clayton Act. Since 2005, the HSR Act thresholds have been indexed annually by the FTC to reflect changes in U.S. gross national product. This is the first year since annual indexing was implemented that the thresholds were reduced from the previous year's thresholds.

New HSR Act Pre-Merger Notification Thresholds

The HSR Act requires companies (or private investors) contemplating mergers or acquisitions of voting securities or assets that meet or exceed certain monetary thresholds to file notification forms with the FTC and DOJ, and to wait a designated period of time before consummating the transaction. For transactions closing on or after February 22, 2010, parties generally will need to comply with the HSR pre-merger notification and waiting period requirements if the following revised thresholds are met and no exemptions apply:

1. The size of the transaction is in excess of \$253.7 million;

OR

2. (a) The size of the transaction is in excess of \$63.4 million, (b) the total assets or annual net sales of one party to the transaction equals \$126.9 million or more, and (c) the total assets or annual net sales of the other party to the transaction equals \$12.7 million or more.

Although the HSR Act filing fee amounts will not increase, these adjustments do affect the filing fee schedule as follows:

Size of the Transaction	Filing Fee
In excess of \$63.4 million, but less than \$126.9 million	\$45,000
\$126.9 million or more, but less than \$634.4 million	\$125,000
\$634.4 million or more	\$280,000

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These adjustments constitute the primary changes to HSR regulations resulting from the FTC's January 19 annual adjustment of the jurisdictional thresholds. Other regulations governing the methodology for calculating the size of party and size of transaction tests, as well as exemptions from the HSR, remain unchanged.

New Interlocking Directorates Thresholds

When the FTC revised the HSR thresholds, it also announced the annual adjustment to the test for interlocking directorates under Section 8 of the Clayton Act. Like the HSR thresholds, the interlocking directorates threshold was reduced as a result of the current economic downturn. Section 8 of the Clayton Act prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations. Under the adjusted thresholds, which were effective January 21, 2010, a person may not serve as a director or officer of two competing corporations if each corporation has capital, surplus and undivided profits aggregating more than \$25,841,000, and if one or more of the companies has competitive sales above \$2,584,100. Additional exemptions provided under the statute remain unchanged.

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