



Mergers & Acquisitions/Antitrust ADVISORY ■

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FTC Revises Thresholds for HSR Filings and Interlocking Directorates

On January 17, 2014, the Federal Trade Commission (FTC) announced its annual adjustment of the jurisdictional thresholds for pre-merger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) and for interlocking directorates under Section 8 of the Clayton Act. The revisions account for changes in the level of the U.S. gross national product and constitute an increase of around seven percent.

I. HSR Act Pre-Merger Notification Thresholds

The HSR Act requires companies contemplating mergers or acquisitions of voting securities or assets that meet or exceed certain monetary thresholds to file notification forms with the FTC and Department of Justice and to wait a designated period of time before consummating the contemplated transaction. The new thresholds will go into effect for transactions closing on or after February 24, 2014. For transactions closing after this date, companies generally will need to comply with the HSR Act pre-merger notification and waiting period requirements if the following is true:

1. The size of the transaction (as defined by the HSR Act and applicable regulations) is in excess of \$303.4 million;

or
2. The size of the transaction is in excess of \$75.9 million, the total assets or annual net sales of one party to the transaction (as defined by the HSR Act and applicable regulations) equals \$151.7 million or more, and the total assets or annual net sales of the other party to the transaction equals \$15.2 million or more.

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

<i>Size of the Transaction</i>	<i>Filing Fee</i>
In excess of \$75.9 million, but less than \$151.7 million	\$45,000
\$151.7 million or more, but less than \$758.6 million	\$125,000
\$758.6 million or more	\$280,000

These adjustments constitute the primary changes to the HSR Act regulations adopted by the FTC on January 17. Additional regulations governing the methodology for calculating the size of party and size of transaction tests, as well as exemptions from the HSR Act, remain unchanged.

II. Interlocking Directorates Thresholds

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 FTC's revised Section 8 thresholds, which became effective upon publication in the Federal Register on January 23, 2014, 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 \$29,945,000, unless one or more of the corporations has competitive sales under \$2,994,500 or other exceptions apply.

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