

## **Hart-Scott-Rodino Premerger Filing Thresholds Raised by the Federal Trade Commission**

### **Thresholds Regarding Interlocking Directorates Changed as Well**

The Federal Trade Commission (“FTC”) last week announced its annual revision of the filing thresholds for the Hart-Scott-Rodino Antitrust Improvements Act (“HSR Act”), which determine whether companies may be required to notify U.S. antitrust authorities of a pending transaction. At the same time, the FTC announced revisions to thresholds relating to prohibitions on interlocking directorates under Section 8 of the Clayton Act. Annual revisions are required by law to maintain parity with the gross national product.

Under the newly adjusted HSR Act thresholds, a merger or acquisition of stock or assets valued at more than \$66 million (the 2010 level was \$63.4 million) may be subject to premerger notification and waiting period requirements, if the transaction meets certain other criteria. The HSR Act requires parties to certain mergers or acquisitions to file premerger notification reports with the FTC and the Antitrust Division of the Department of Justice and observe waiting periods, which provides an opportunity for the antitrust authorities to review transactions for possible antitrust violations under Section 7 of the Clayton Act before the transactions are closed.

The size of the parties to a transaction affects reporting obligations, and these thresholds have been adjusted as well. Unless a transaction is otherwise exempt, it is reportable under the HSR Act in the following circumstances:

<b>Size of the Transaction</b>	<b>Reporting Obligation</b>
\$66 million or less	None.
More than \$66 million but less than \$263.8 million	Filing may be required if one party’s sales or assets exceed \$131.9 million and the other party’s sales or assets exceed \$13.2 million.
More than \$263.8 million	Filing may be required irrespective of the parties’ size.

HSR Act filing fee categories have also been adjusted. The new schedule of fees will be:

<b>Size of the Transaction</b>	<b>Filing Fee</b>
\$66 million or less	None
More than \$66 million but less than \$131.9 million	\$45,000
Equal to or greater than \$131.9 million but less than \$659.5 million	\$125,000
\$659 million or greater	\$280,000

New thresholds for the Clayton Act's prohibition on interlocking directorates were also announced last week. Section 8 of the Clayton Act makes it illegal for a person to serve as a director or officer for two competing corporations when the companies' profits or competitive sales exceed threshold limits. Under the new thresholds, it is illegal for an individual to serve in these capacities for corporations that are competitors of one another if each company has capital, surplus and undivided profits aggregating more than \$26,867,000 (Clayton Act, Section 8(a)(1)), unless the competitive sales of one of the companies against the other are less than \$2,686,700 (Clayton Act, Section 8(a)(2)(A)).

The revised HSR Act thresholds will take effect on February 24, 2010. The revisions regarding interlocking directorates are effective immediately.

Certain transactions may be eligible for exemptions from the HSR Act's filing requirements. Please feel free to contact any member of the Antitrust or Corporate team if you have any questions concerning the premerger notification requirements of the HSR Act.

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