

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

### Interlocking Directorates Thresholds Changed as Well

The Federal Trade Commission (“FTC”) announced its annual revision of the filing thresholds under the Hart-Scott-Rodino Antitrust Improvements Act (“HSR Act”), which determine companies’ reporting obligations for mergers and acquisitions. The FTC has also announced revisions to thresholds relating to prohibitions on interlocking directorates under Section 8 of the Clayton Act. The revised thresholds will become effective in late February 2012.

The Federal Trade Commission (“FTC”) this 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 \$68.2 million (the 2011 level was \$66 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 to observe waiting periods that allow the antitrust authorities to review transactions for possible antitrust violations under Section 7 of the Clayton Act before closing occurs on the transactions.

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:

Size of the Transaction	Reporting Obligation
\$68.2 million or less	None.
More than \$68.2 million but less than \$272.8 million	Filing may be required if one party’s sales or assets exceed \$136.4 million and the other party’s sales or assets exceed \$13.6 million.
Over \$272.8 million	Filing may be required irrespective of the parties’ size.

Filing fees have also been adjusted. The new fees will be:

Size of the Transaction	Filing Fee
\$68.2 million or less	None
More than \$68.2 million but less than \$136.4 million	\$45,000
Equal to \$136.4 million but less than \$682.1 million	\$125,000
\$682.1 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 companies 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 competing corporations if each company has capital, surplus and undivided profits aggregating more than \$27,784,000 (Clayton Act, Section 8(a)(1)), unless one of the companies' competitive sales against the other are less than \$2,778,400 (Clayton Act, Section 8(a)(2)(A)).

The revised HSR Act thresholds will become effective in late February, 30 days following their publication in the Federal Register, which should be accomplished shortly. The revisions regarding interlocking directorates will be effective upon publication.

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