



FTC ANNOUNCES HSR PREMERGER NOTIFICATION AND CLAYTON ACT § 8 THRESHOLDS

FTC Revises Hart-Scott-Rodino Act Premerger Notification Thresholds

On January 24, 2012, the Federal Trade Commission (“FTC”) approved new thresholds for premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). Amendments to the HSR Act enacted in 2000 require the FTC to revise the notification thresholds annually based on changes in the United States gross national product (“GNP”). The newly-revised thresholds apply to transactions that close on or after February 27, 2012.

With the changes just approved, the minimum “size-of-transaction” threshold for any acquisition of voting securities, non-corporate interests, or assets not exempt from HSR notification requirements will increase to **\$68.2 million**.

Currently, acquisitions resulting in holdings valued at greater than \$66.0 million, but less than or equal to \$263.8 million, are reportable only if the “size-of-person” test described below is met, and acquisitions resulting in holdings greater than \$263.8 million are reportable regardless of whether the size-of-person test is met. These thresholds will increase, respectively, to **\$68.2 million** and **\$272.8 million**.

The size-of-person test currently provides generally that at least one “person” involved in the transaction must have annual net sales or total assets of at least \$131.9 million and the other must have annual net sales or total assets of at least \$13.2 million. These thresholds will increase, respectively, to **\$136.4 million** and **\$13.6 million**.

In the wake of the upcoming revisions, the five notification thresholds for acquisitions of voting securities (which specify whether a filing, or successive filing, is necessary) will require notification where the acquisition results in holding:

- Aggregate total amount of voting securities of the acquired person valued at **> \$68.2 million**, but **< \$136.4 million**.
- Aggregate total amount **≥ \$136.4 million**, but **< \$682.1 million**.
- Aggregate total amount **≥ \$682.1 million**.
- 25% of the outstanding voting securities of an issuer if valued at **> \$1,364.1 million**.
- 50% of the outstanding voting securities if **> \$68.2 million**.

The graduated HSR filing fee schedule will shift as follows:

<u>Size (value) of Transaction</u>	<u>Fee</u>
> \$68.2 million - < \$136.4 million	\$45,000
≥\$136.4 million - <\$682.1 million	\$125,000
≥ \$682.1 million	\$280,000

The text of the Federal Register notice can be found at:

<http://www.ftc.gov/os/2012/01/120124claytonact7a.pdf>

FTC Revises Clayton Act Section 8 Thresholds for Interlocking Directorates

The FTC also announced revised thresholds for interlocking directorates under Section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, a person from serving as a director or officer of two competing corporations if two thresholds are met. Section 8 as enacted applies if each competitor corporation has capital, surplus, and undivided profits of more than \$10,000,000, except that no prohibition against interlocking directorates or officers applies if the competitive sales of either corporation are less than \$1,000,000. These amounts are subject to annual revision; following last year's revision, the thresholds were \$26,867,000 and \$2,686,700. The new thresholds, which took effect on January 27, 2012, are **\$27,784,000** and **\$2,778,400**, respectively.

The text of the Federal Register notice can be found at:

<http://www.ftc.gov/os/2012/01/120124claytonact8.pdf>

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

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