



## UNITED STATES ANNOUNCES NEW THRESHOLDS FOR MERGER CONTROL NOTIFICATIONS (HART SCOTT RODINO) AND UNLAWFUL INTERLOCKING DIRECTORATES (SECTION 8)

### **HART-SCOTT-RODINO**

The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR”), requires that all persons contemplating certain mergers, acquisitions or joint ventures file notifications with the Antitrust Division of the U.S. Department of Justice and with the Federal Trade Commission, and not close the transaction for a specified period of time (usually, but not always, 30 days). The waiting period is extended if either agency requests additional documents and information.

To determine whether a particular transaction is subject to HSR, the initial question is whether as a result of the transaction, the acquiring person will hold assets or voting securities of the acquired person exceeding a threshold amount. This threshold is adjusted annually, based upon the change in gross national product.

**Effective February 26, 2012, the initial threshold for HSR will be \$68.2 million.** Therefore, a transaction will not be subject to HSR unless as a result of the transaction, the acquiring person will hold assets or voting securities of the acquired person exceeding \$68.2 million. This is an increase from the current threshold of \$66.0 million.

The HSR statute and regulations are fairly complex, and contain many exemptions and qualifications. Not every transaction that satisfies the initial threshold is subject to HSR. Therefore, even if a transaction satisfies the initial HSR threshold, further analysis is necessary in order to determine whether that transaction is subject to HSR. If, however, a transaction does not satisfy the initial threshold, the transaction definitely is not subject to HSR.

### **SECTION 8 OF THE CLAYTON ACT**

Section 8 of the Clayton Act, as amended, prohibits a person from serving as a director or board-elected or board-appointed officer of two competing corporations, other than banks, banking associations and trust companies. This prohibition does not apply, however, (1) if either corporation has capital, surplus and undivided profits aggregating less than a certain threshold; (2) if the competitive sales of either corporation are less than another threshold; (3) if the competitive sales of either corporation are less than two percent of that corporation’s total sales; or (4) if the competitive sales of each corporation are less than four percent of that corporation’s total sales. Each of the first two thresholds is adjusted annually, based on the change in gross national product. **Effective immediately, the threshold for capital, surplus and undivided profits is \$27,784,000; and the threshold for competitive sales is \$2,778,400.** For the past year, these thresholds have been \$26,867,000 and \$2,686,700, respectively.



ANTITRUST & COMPETITION LAW PRACTICE GROUP CLIENT ALERT

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FOR FURTHER INFORMATION, PLEASE CONTACT:

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