

FTC Updates Thresholds for HSR Premerger Notification and Interlocking Directorates

The Federal Trade Commission (“FTC”) has announced that it is raising the jurisdictional thresholds for making a Hart-Scott-Rodino Act (“HSR Act”) premerger notification and for interlocking directorates under Section 8 of the Clayton Act. The revised HSR Act thresholds will apply to transactions that close on or after February 28, 2018, while those for interlocking directorates apply as of January 29, 2018.

HSR Act Premerger Notification Thresholds

The HSR Act requires parties to certain merger transactions to notify the FTC and Department of Justice and wait a specified period prior to consummating such proposed transactions. HSR filings are required when both the size-of-transaction (as measured by the value of the voting securities, non-corporate interests, or assets acquired) and size-of-person tests are met or when the size-of-transaction exceeds a certain dollar threshold. The FTC revises filing thresholds annually, based on changes in the gross national product.

For 2018:

- The initial size-of-transaction threshold has been raised to \$84.4 million, up from \$80.8 million in 2017.
- Transactions between \$84.4 million and \$337.6 million will be reportable only if the size-of-person test is met. With the revised thresholds, one “person” in the transaction must have assets or annual net sales over \$168.8 million (up from \$161.5 million) and the other over \$16.9 million (up from \$16.2 million).
- Where the size-of-transaction exceeds \$337.6 million, the transaction will be subject to HSR Act reporting regardless of party size.

Thresholds that apply to the acquisition of additional securities from the same issuer also have been increased. Notification now may be required where an acquisition results in aggregate holdings of voting securities in excess of the following thresholds:

- \$84.4 million-\$168.8 million
- 168.8 million-\$843.9 million
- \$843.9 million or greater
- 25% of the voting securities of an issuer if the securities’ value is over \$1,687.8 million

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- 50% of the outstanding voting securities of an issuer if the securities' value is over \$84.4 million

The HSR Act filing fee thresholds will also be adjusted as follows:

- \$45,000 for transactions valued above \$84.4 million, but less than \$168.8 million
- \$125,000 for transactions valued at or above \$168.8 million, but less than \$843.9 million
- \$280,000 for transactions valued at or above \$843.9 million

Clayton Act Section 8 “Interlocking Directorate” Thresholds

Section 8 of the Clayton Act prohibits a person from serving as a director or officer of competing corporations, an overlap known as an “interlocking directorate.” Section 8 applies to natural persons as well as legal entities, which are prohibited from appointing their own directors or employees to competitors' boards.

The prohibition on interlocking directorates, however, does not apply where:

- Either firm has capital, surplus, and undivided profits aggregating less than \$34,395,000;
- The competitive sales of either firm are less than \$3,495,500;
- The competitive sales of either firm are less than 2% of that firm's total sales; or
- The competitive sales of each firm are less than 4% of that firm's total sales.

The jurisdictional thresholds have been increased from their respective 2017 levels of \$32,914,000 and \$3,291,400. The percentage thresholds are unchanged.

A full copy of the FTC's announcement can be found on the [FTC's website](#).

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