

FTC Approves Increase in Annual Adjustments to HSR and Interlocking Directorate Thresholds

The US Federal Trade Commission (FTC) has announced revised thresholds for the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976. The revisions increase the lowest “size-of-transaction” threshold at which HSR filings may be required from the current US\$66 million to US\$68.2 million.

Under the HSR Act, the FTC and Department of Justice (DOJ) must be notified before mergers, acquisitions and other transactions that meet certain monetary thresholds are consummated. Once notification is filed, the parties must observe a 30-day waiting period (unless granted early termination) to allow the agencies to review the transaction for possible violation of antitrust laws.

Section 7A(a)(2) of the Clayton Act requires the FTC to revise annually the jurisdictional thresholds and other thresholds and limitations in the HSR rules according to changes in gross national product. Accordingly, each of the affected thresholds will increase approximately 3.3 percent over current amounts.

The new thresholds will be published in the Federal Register within the next few days and will take effect 30 days after the date of publication. The thresholds will apply to transactions that will close on or after that date. Significant thresholds to be changed are as follows:

Original Threshold	Current Threshold	Revised Threshold
US\$10 million	US\$13.2 million	US\$13.6 million
US\$50 million	US\$66.0 million	US\$68.2 million
US\$100 million	US\$131.9 million	US\$136.4 million
US\$200 million	US\$263.8 million	US\$272.8 million
US\$500 million	US\$659.5 million	US\$682.1 million
US\$1 billion	US\$1.319 billion	US\$1.3641 billion

Filing fee amounts will remain the same; however, filing fee thresholds will increase as follows: a fee of US\$45,000 will be required for transactions valued at more than US\$68.2 million, but less than US\$136.4 million; a fee of US\$125,000 will be required for transactions valued at or in excess of US\$136.4 million, but less than US\$682.1 million; and a fee of US\$280,000 will be required for transactions valued at or more than US\$682.1 million.

Interlocking Directorate Threshold

Section 8 of the Clayton Act generally prohibits persons from serving as a director or officer of two competing corporations (so-called “interlocking directorates”) if each corporation is of a certain minimum size. Under the thresholds required by a 1990 amendment to the Act, interlocking directorates will be prohibited where (i) each competing corporation has capital, surplus and undivided profits of more than US\$27,784,000 (increased from US\$26,867,000), and (ii) neither corporation has competitive sales less than US\$2,778,400 (increased from US\$2,686,700). These new monetary thresholds will be published in the Federal Register within the next few days and will take effect immediately upon publication.

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January 2012