

Clients & Friends Memo

HSR Thresholds Increased for 2013

January 14, 2013

The Federal Trade Commission's ("FTC") annual revisions to the dollar jurisdictional thresholds in the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), will become effective on February 11, 2013. These changes increase the dollar thresholds necessary to trigger the HSR Act's premerger notification reporting requirements. The FTC also increased the thresholds for interlocking directorates under Section 8 of the Clayton Act.

Revised HSR Thresholds

Under the HSR Act, parties involved in proposed mergers, acquisitions of voting securities, unincorporated interests or assets, or other business combinations (e.g., joint ventures, exclusive license deals) that meet certain thresholds must report the contemplated transactions to the FTC and the Antitrust Division of the U.S. Department of Justice ("DOJ") unless an exemption applies. The parties to a proposed transaction that requires notification under the HSR Act cannot close the transaction until a statutorily prescribed waiting period (generally 30 days) has expired or been terminated early. Under the revised thresholds, transactions valued at **\$70.9 million** or less are not reportable under the HSR Act.

A transaction closing on or after February 11, 2013, may be reportable if it meets the following revised criteria:

Size of Transaction Test	<p>The acquiring person will hold, as a result of the transaction, an aggregate total amount of voting securities, unincorporated interests, or assets of the acquired person valued in excess of \$283.6 million;</p> <p><i>or</i></p> <p>The acquiring person will hold, as a result of the transaction, an aggregate total amount of voting securities, unincorporated interests, or assets of the acquired person valued in excess of \$70.9 million, <u>and</u> the Size of Person thresholds below are met.</p>
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Size of Person Test	Either the acquiring person or the acquired person has at least \$14.2 million in total assets or annual sales, and the other person has at least \$141.8 million in total assets or annual sales.
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The full list of the revised thresholds is as follows:

Original Threshold	2012 Threshold	Revised Threshold <i>(Effective as of February 11, 2013)</i>
\$10 million	\$13.6 million	\$14.2 million
\$50 million	\$68.2 million	\$70.9 million
\$100 million	\$136.4 million	\$141.8 million
\$110 million	\$150.1 million	\$156.0 million
\$200 million	\$272.8 million	\$283.6 million
\$500 million	\$682.1 million	\$709.1 million
\$1 billion	\$1,364.1 million	\$1,418.1 million

The filing fees for reportable transactions have not changed, but the transaction value ranges to which they apply have been adjusted as follows:

Filing Fee	Revised Size of Transaction Thresholds
\$45,000	For transactions valued in excess of \$70.9 million but less than \$141.8 million
\$125,000	For transactions valued at \$141.8 million or greater but less than \$709.1 million
\$280,000	For transactions valued at \$709.1 million or more

Note that the HSR dollar thresholds are only part of the analysis to determine whether a particular transaction must be reported to the FTC and DOJ. Failure to notify the FTC and DOJ under the HSR Act remains subject to a statutory penalty of up to \$16,000 per day of noncompliance.

Revised Thresholds for Interlocking Directorates

Section 8 of the Clayton Act prohibits one person from simultaneously serving as an officer or director of two corporations if: (1) the “interlocked” corporations each have combined capital, surplus, and undivided profits of more than \$28,883,000; (2) each corporation is engaged in whole or in part in commerce; and (3) the corporations are “by virtue of their business and location of

operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws.”¹

Section 8 provides several exemptions from the prohibition on interlocks for arrangements where the competitive overlaps “are too small to have competitive significance in the vast majority of situations.”² A corporate interlock does not violate the statute if: (1) the competitive sales of either corporation are less than \$2,888,300; (2) the competitive sales of either corporation are less than 2 percent of that corporation’s total sales; or (3) the competitive sales of each corporation are less than 4 percent of that corporation’s total sales.

The revised dollar thresholds for interlocking directorates of \$28,883,000 and \$2,888,300 became effective on January 14, 2013.

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If you have any questions about this memorandum or any HSR reportability questions, please feel free to contact any of the following attorneys from Cadwalader’s Antitrust Group:

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¹ 15 U.S.C. § 19(a)(1)(B).

² S. REP. NO. 101-286, at 5-6 (1990), *reprinted in* 1990 U.S.C.C.A.N. 4100, 4103-04.