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Antitrust Alert



Federal Trade Commission Announces New Jurisdictional Thresholds for Premerger Notifications and Interlocking Directorates

On Jan. 19, the Federal Trade Commission (FTC) announced changes to the jurisdictional thresholds applicable to Section 7A of the Clayton Act, 15 U.S.C. 18a (the Hart-Scott-Rodino, “HSR” Act) and Section 8 of the Clayton Act, 15 U.S.C. 19 (which prohibits certain interlocking directorates). Because these thresholds are tied to changes in the gross national product, this year—for the first time—the thresholds have gone *down* from prior years.

Premerger Notification and Waiting Period

Under the HSR Act, mergers and the acquisitions of assets, voting securities, and other non-corporate interests above certain dollar thresholds must be reported to the FTC and the Department of Justice prior to consummation so that the potential competitive implications of the transaction can be assessed prior to closing. Section 7A(a)(2) of the Clayton Act requires that these thresholds be revised annually.

The new thresholds will become effective in February. Most significantly, the “size of the transaction” test has been reduced from \$65.2 million to \$63.4 million. Accordingly, as of February, a transaction must be valued at less than \$63.4 million to be exempt from the HSR Act reporting requirements based upon the size of the deal. Other significant changes to the thresholds include modifications to the “size of the person” test and changes in the filing fees. These changes are summarized below.

	<u>2009 Threshold</u>	<u>2010 Threshold</u>
“Size of Transaction” Test	\$65.2 Million	\$63.4 Million
“Size of Person” Test	One “person” with \$130.3 million in assets and the other with \$13.0 million	One “person” with \$126.9 million in assets and the other with \$12.7 million

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HSR Filing Fees	The fee for a transaction valued at or above:	The fee for a transaction valued at or above:
	\$ 65.2M = \$45,000	\$63.4M = \$45,000
	\$ 130.3M = \$125,000	\$126.9M = \$125,000
	\$ 651.7M = \$280,000	\$634.4M = \$280,000

Interlocking Directorates

Under Section 8 of the Clayton Act, individuals are generally prohibited from serving on the board of two competing corporations. However, an individual may serve on two boards where the corporations are quite small or their competition quite limited. The FTC also revises the thresholds applicable to Section 8 annually.

For 2010, the new Section 8 thresholds, which have already been made effective, make it unlawful for an individual to serve on the boards of two competing corporations that each have capital, surplus, and undivided profits of more than \$25,841,000. However, an exception applies to circumstances where the competitive sales of either corporation are less than \$2,584,100.

	<u>2009 Threshold</u>	<u>2010 Threshold</u>
“Capital Surplus, and Undivided Profits” Test	More than \$26,261,000	More than \$25,841,000
“Competitive Sales” Test	Less than \$2,626,100	Less than \$2,548,100

For more information, please see the FTC’s news release announcing these revised jurisdictional thresholds, which may be found at:
www.ftc.gov/opa/2010/01/hsr-safeharbor.shtm

For more information on this topic and other matters pertaining to antitrust law, please contact issue editor James M. Burns or any member of the Williams Mullen Antitrust Team.

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