



## Federal Trade Commission Announces Changes To The Hart Scott Rodino Premerger Notification Reporting Thresholds And The Thresholds For Interlocking Directorates

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The Hart-Scott-Rodino Act, 15 U.S.C. 18a (the "HSR Act") requires that parties contemplating mergers or the acquisition of assets, voting securities and other non-corporate interests above certain dollar thresholds be reported to the Federal Trade Commission and the Department of Justice Antitrust Division 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 adjusted each year, based on changes to the gross national product.

On January 21, the Federal Trade Commission announced new thresholds for 2011. These thresholds, which will become effective in February, reflect across the board increases from 2010 levels. Among the most notable changes, the "size of the transaction" test under the HSR Act will increase from \$63.4 million to \$66 million. This means that, once the changes go into effect, no transaction valued at below \$66 million will require HSR approval. Other significant changes to the thresholds include increases in the "size of the person" test requirements for reportability and the trigger points at which filing fees escalate under the HSR Act. These changes are summarized below:

	2011 Threshold	2010 Threshold
"Size of the transaction" test	\$66 million	\$63.4 million
"Size of the parties" test	One "person" with at least \$131.9 million in assets and another with more than \$13.1 million in assets; test applies only for transactions up to \$263.8 million	One "person" with at least \$126.9 million in assets and another with more than \$12.7 million in assets; test applies only for transactions up to \$253.7 million
Filing Fees	The filing fee for a transaction valued at or above: \$66 million = \$45,000 \$131.9 million = \$125,000 \$659.5 million = \$280,000	The filing fee for a transaction valued at or above: \$63.4 million = \$45,000 \$126.9 million = \$125,000 \$634.4 million = \$280,000

## **Interlocking Directorates**

Under Section 8 of the Clayton Act, an individual is generally prohibited from serving on the board of directors of two competing companies. The only exception to this rule is where the corporations are quite small or the level of competition between the two corporations is quite limited. The thresholds applicable to this exception are also adjusted by the Federal Trade Commission each year.

For 2011, the new Section 8 thresholds will make it unlawful for an individual to serve on the board of directors (or as a board-elected officer) of two competing corporations if the combined capital, surplus and undivided profits of each corporation totals more than \$26.867 million, *unless* the competitive sales of either corporation are less than \$2.687 million. (An additional exception, which is not inflation adjusted, also applies where the competitive sales of either corporation are less than 2% of the corporation's total sales or the competitive sales of each corporation are less than 4% of that corporation's total sales.)

	<b>2011 Threshold</b>	<b>2010 Threshold</b>
<b>Capital Surplus and Undivided Profits Threshold</b>	<b>More than \$26.867 million</b>	<b>More than \$25.841 million</b>
<b>"Competitive Sales" Threshold</b>	<b>Less than \$2.687 million</b>	<b>Less than \$2.584 million</b>

*For more information on any of these issues, please contact Bradley J. Nowak at (202) 293.8143 or by email at .*

## **Related People**

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