



FTC Announces Higher Merger Filing and Director Interlock Thresholds for 2014

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The Federal Trade Commission (“FTC”) recently announced revised jurisdictional thresholds that determine whether merging parties must notify the FTC and U.S. Department of Justice (“DOJ”) of their transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“HSR Act”). The FTC revises these thresholds annually based on changes in the gross national product. The new HSR thresholds will apply to all transactions that close on or after the effective date, which is expected to be in late February 2014 – thirty days after their publication in the Federal Register.

Merger Filings

The HSR Act requires that parties to certain mergers and acquisitions file a notification form and related documentation with the FTC and DOJ if the transaction value exceeds a prescribed dollar amount (“size of transaction test”) and the parties’ annual net sales or total assets exceed the Act’s thresholds (“size of person test”). After notifying the agencies, the parties must wait 30 days – 15 days in the case of cash tender offers – before closing, unless the agencies either terminate this waiting period sooner or extend it by seeking additional information about the deal.

In 2014, parties may have to file notification if their transaction value exceeds \$75.9 million *and* they meet the size of person test. To meet this test, one party to the transaction must have annual net sales or total assets of at least \$151.7 million, and the other party must have annual net sales or total assets of at least \$15.2 million. If a non-exempt transaction is valued above \$303.4 million, however, the parties must file notification without regard to the size of person test.

Filing Fees Remain the Same

The filing fees for merger notifications will be tied to higher transaction value thresholds; however, the fees themselves will remain the same. Parties to reportable transactions will pay fees based on this schedule:

VALUE OF TRANSACTION (\$MILLIONS)	FEE (\$)
More than \$75.9, up to \$151.7	\$45,000
Equal to or greater than \$151.7, up to \$758.6	\$125,000
Equal to or greater than \$758.6	\$280,000

Interlocking Directorates

Section 8 of the Clayton Act generally prohibits a person from serving as a director or board-elected or board-appointed officer of two competing corporations (other than banks, banking associations, and trust companies), subject to certain thresholds and safe harbors. The FTC also announced changes to the thresholds that trigger this prohibition, which will take effect immediately upon publication in the Federal Register.

Under the new thresholds, director interlocks will generally be prohibited if both corporations have capital, surplus, and undivided profits of at least \$29,945,000 and competitive sales of at least \$2,994,500, subject to certain exceptions.

We encourage companies contemplating merger activity to consider the antitrust implications. HSR rules are complex, and both acquiring and acquired companies must file notifications when thresholds are met. Failure to do so properly can result in civil penalties of up to \$16,000 per day and will delay consummation of the transaction. We note, too, that even smaller transactions that do not require an HSR filing are subject to antitrust scrutiny and should, therefore, be reviewed for potential risks.

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