

Adjusted HSR Premerger Notification Thresholds Take Effect February 25

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The Federal Trade Commission has revised the thresholds that determine whether companies are required to notify federal antitrust authorities about a transaction under the Hart-Scott-Rodino (HSR) Antitrust Improvements Act. The new thresholds take effect February 25, 2016. As of that date, a transaction resulting in an acquiring person holding an aggregate total amount of voting securities and assets of the acquired party of \$78.2 million or less (at the time of closing) does not need to be reported under the HSR Act. This is up from \$76.3 million. Transactions resulting in excess of \$312.6 million (up from \$305.1 million) of ownership of assets or voting securities of an acquired person will have to be reported, unless otherwise exempted.

“Size of person” test. Transactions valued in excess of \$78.2 million but at \$312.6 million or less would still not be reportable unless they satisfy the so-called “size of person” test. This test will require one side of the transaction to have sales or assets in excess of \$156.3 million and the other \$15.6 million, as of February 25, 2016.

Filing Fees. While the filing fees are not adjusted for inflation, the filing fee thresholds are revised annually. As of February 25, 2016, a \$45,000 filing fee is required for transactions valued at less than \$156.3 million. Transactions valued at

\$156.3 million or greater but less than \$781.5 million require a \$125,000 fee. Transactions valued at \$781.5 million or greater require a \$280,000 fee.

Interlocking Directorates. The agency also revised the monetary thresholds that trigger a prohibition preventing companies from having interlocking memberships on their corporate boards of directors, pursuant to Section 8 of the Clayton Act. Those took effect on January 26, 2016.

Under the new thresholds, a person is prohibited from simultaneously serving as a director or officer in any two competing corporations where each of the corporations has capital, surplus, and undivided profits aggregating more than \$31.841 million (Clayton Act, Sec. 8(a)(1)), but would not apply where the competitive sales of either corporation is less than \$3,184,100 or less than 2% of its total sales or where the competitive sales of each corporation are less than 4% of its total sales (Clayton Act, Sec. 8(a)(2)(A)).