

Revised Thresholds for the HSR Act and Prohibitions Against Interlocking Directors Announced

Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as Amended ("HSR Act") parties to an acquisition of voting securities, non-voting securities, or assets are required to make notification filings ("HSR filings") with the U.S. Federal Trade Commission ("FTC") and Department of Justice ("DOJ"), if the size of the parties and the value of the transaction exceed particular thresholds, barring one of numerous exemptions. The parties must also abide by a mandatory waiting period before closing. The FTC revises these thresholds annually based on changes to the gross national product. On January 15, 2015, the FTC announced this year's revision to the thresholds.

Recent amendments to the HSR Act codified a long-standing permitted practice of pulling-and-re-filing an HSR filing. By doing so, the parties stop the original 30-day waiting period and begin a new one, essentially extending the waiting period up-to 60-days (depending upon weekends, holidays, and when the parties re-file). The Premerger Notification Office of the Federal Trade Commission, which oversees compliance with the HSR Act, for years had informally permitted parties to pull-and-re-file their HSR filings without paying a new filing fee. Under the relatively new codified rules, the practice of pulling-and-re-filing is permitted without the parties incurring a new filing fee so long as (1) there are not any material changes to the transaction; (2) within 30-days from its initial filing the buyer formally notifies the U.S. antitrust authorities of its intent to pull-and-re-file their premerger notification; (3) the buyer updates its filing with any new information, particularly any additional Item 4 documents; and (4) the buyer submits a new filing within two business days. This allows the agencies additional time to review the transaction. Parties are only permitted to pull-and-re-file without paying the filing fee one time.

According to the newly announced adjustments, acquisitions of voting securities, non-corporate interests, or assets valued between \$76.3 million (previously \$75.9 million) and \$305.1 million (previously \$303.4 million) may be reportable under the HSR Act if the parties satisfy the size-of-person test. As adjusted, such transactions may be reportable only when one party has assets or sales of at least \$152.5 million (previously \$151.7 million) and the other party has assets or sales in excess of \$15.3 million (previously \$15.2 million). Transactions valued above \$305.1 million (previously \$303.4 million) are reportable regardless of the size of parties.

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These new thresholds will take effect 30-days after the revised thresholds are published in the Federal Registrar. They will apply to all transactions that close on or after that effective date, which will likely be mid-February.

Below is a summary of the current and revised thresholds:

	2014 Thresholds	Revised Thresholds
Size-of-Transaction Test	\$75.9 million	\$76.3 million
Size-of-Person Test	Party 1 – sales or assets in excess of \$15.2 million Party 2 – sales or assets in excess of \$151.7 million	Party 1 – sales or assets in excess of \$15.3 million Party 2 – sales or assets in excess of \$152.5 million
Size-of-Transaction Test above which the Size-of-Person Test is inapplicable	\$303.4 million	\$305.1 million

In addition to the HSR Act's relevant thresholds, the FTC also announced that it has revised the thresholds prohibiting interlocking directors of certain competitors. Section 8 of the Clayton Act prohibits any person from acting as an officer or director of two competing corporations if each corporation has capital, surplus or profits in excess of \$31.084 million (previously \$29.945 million). However, corporations are exempt if either has competitive sales below \$3,108,400 (previously \$2,994,500). For purposes Section 8 of the Clayton Act, "competitive sales" means "gross revenue for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and all services in that corporation's last completed fiscal year."

Unlike the HSR thresholds, the thresholds relevant to interlocking directorates will take effect January 16, 2015.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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