

FTC Announces Annual Update of Thresholds for Premerger Notification Filings and Interlocking Directorates for 2016

The Federal Trade Commission (the FTC) has revised the monetary thresholds applicable to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act). The HSR Act requires companies proposing a merger or acquisition to notify federal authorities if the size of the parties involved and the value of a transaction exceed certain monetary thresholds, absent an applicable exemption. The FTC revises the thresholds set forth in the HSR Act annually, based on the change in the gross national product. As a result of this revision, the size-of-transaction threshold for reporting proposed mergers and acquisitions subject to antitrust enforcement will increase from \$76.3 million for 2015 to \$78.2 million for 2016. The new HSR Act thresholds were published in the Federal Register on January 26, 2016 and will become effective for any transaction that closes on or after February 25, 2016.

HSR filing fees remain the same, but the thresholds that determine the fees have been revised. Under the new thresholds, acquiring persons in transactions valued above \$78.2 million up to \$156.3 million must pay a fee of \$45,000. For transactions valued at \$156.3 million up to \$781.5 million, a \$125,000 fee is required. A \$280,000 fee is applied to transactions valued at or above \$781.5 million.

In addition, the FTC has revised the thresholds relating to the application of Section 8 of the Clayton Act, which prohibits a person from serving as a director or officer of competing corporations if certain thresholds are met and an exemption does not apply. Effective January 26, 2016, competing corporations are covered by Section 8 if each corporation's capital, surplus, and undivided profits exceed in the aggregate \$31,841,000, unless one or more of the following exemptions apply: (i) one of the corporations has competitive sales of less than \$3,184,100; (ii) the competitive sales of either corporation are less than 2% of that corporation's total sales; or (iii) the competitive sales of each corporation are less than 4% of that corporation's total sales.

The notice concerning the HSR Act thresholds can be accessed at <https://www.federalregister.gov/articles/2016/01/26/2016-01451/revise-jurisdictional-thresholds-for-section-7a-of-the-clayton-act>.

The notice concerning Section 8 of the Clayton Act can be accessed at <https://www.federalregister.gov/articles/2016/01/26/2016-01452/revise-jurisdictional-thresholds-for-section-8-of-the-clayton-act>.

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