

ANTITRUST

**FTC ANNOUNCES NEW, ELEVATED HART-SCOTT-RODINO
PREMERGER NOTIFICATION REPORTING THRESHOLDS**

by James M. Burns and Amy Kwiatkowski

The Hart-Scott-Rodino Act, 15 U.S.C. 18a (the “HSR Act”), requires parties that are contemplating a merger or the acquisition of assets, voting securities and other non-corporate interests above certain dollar thresholds to notify the Federal Trade Commission (the “FTC”) and the Department of Justice Antitrust Division of the proposed transaction, and obtain regulatory approval, prior to closing the transaction.

These thresholds are adjusted annually to reflect changes in the U.S. gross national product. Earlier this month, the FTC announced new thresholds for 2015. These new thresholds will become effective on February 20, and will apply to all transactions closed after that date.

The most significant HSR Act reporting threshold is the “size of the transaction” test. Any transaction that is below the minimum “size of the transaction” threshold is exempt from the HSR Act reporting requirements. For 2015, this threshold has been increased from \$75.9 million to \$76.3 million.

Another threshold that has changed for 2015 is the “size of the parties” test. Even where a transaction meets the “size of the transaction” test, if the parties are not of a significant size, the transaction is exempt from reporting. For 2015, the minimum “size of the parties” requirement increases from \$15.2 million and \$151.7 in either annual sales or total assets to \$15.3 million and \$152.5 million, respectively (with one party having to be larger than the first amount, and the second party having to be larger than the second amount). Notably, the “size of the parties” test does not permit the parties to avoid reporting, regardless of their size, where the size of the transaction exceeds \$305.1 million (which is also increased from \$303.4 million in 2014).

Finally, the trigger points at which filing fees escalate under the HSR Act will also increase. For 2015, a filing fee of \$45,000 will apply to transactions valued below \$152.5 million, a filing fee of \$125,000 will apply to transactions valued between \$152.5 million and \$762.7 million, and a filing fee of \$280,000 will apply to transactions valued above \$762.7 million.

The key adjusted HSR Act thresholds are summarized in the following chart:

| | 2014 Threshold | 2015 Threshold |
|---------------------------------------|---|---|
| “Size of the Transaction” Test | \$75.9 million | \$76.3 million |
| “Size of the Parties” Test | One “person” with at least \$151.7 million in assets and another with more than \$15.2 | One “person” with at least \$152.5 million in assets and another with more than \$15.3 |
| | million in assets; test applies only for transactions up to \$303.4 million | million in assets; test applies only for transactions up to \$305.1 million |
| Filing Fees | <p>The filing fee for a transaction valued below \$151.7 million = \$45,000</p> <p>Transactions valued from \$151.7 million to \$758.6 million = \$125,000</p> <p>Transactions valued above \$758.6 million = \$280,000</p> | <p>The filing fee for a transaction valued below \$152.5 million = \$45,000</p> <p>Transactions valued from \$152.5 million to \$762.7 million = \$125,000</p> <p>Transactions valued above \$762.7 million = \$280,000</p> |

In addition, in the same announcement, the FTC adjusted the thresholds applicable to Section 8 of the Clayton Act (15 U.S.C. 19). Subject to certain thresholds and safe harbors, Section 8 restricts an individual from serving on the board of directors of two competing companies. The new Section 8 thresholds for 2015, which have already become effective, prohibit an individual from serving 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 \$31,084,000, unless the competitive sales of either corporation are less than \$3,108,400 million. (An additional exception 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.)

The key adjusted Section 8 thresholds are summarized in the following chart:

| | 2014 Threshold | 2015 Threshold |
|--|------------------------|------------------------|
| "Capital Surplus and Undivided Profits" Threshold | More than \$29,945,000 | More than \$31,084,000 |
| "Competitive Sales" Exception | Less than \$2,994,500 | Less than \$3,108,400 |

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