Cooley

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The Federal Trade Commission has now set the effective date for its recently announced revisions to the Hart-Scott-Rodino Act thresholds as **February 24, 2011**.

The HSR jurisdictional thresholds, along with related thresholds applicable to the three filing fee tiers and certain exemptions, are adjusted annually by the FTC, based on changes in gross national product (GNP). This year the thresholds have increased modestly—going up roughly 4.0%—compared to last year's first ever threshold decrease.

Once the new thresholds take effect, the "size of transaction" test will reach those transactions in which the value of the voting securities (or assets) to be held as a result of the acquisition will exceed $66 million (compared to the current $63.4 million threshold). The "size-of-person" test will require, in most cases, that at least one party (together with affiliates under common control) has total assets or annual sales of at least $131.9 million, and another party (together with affiliates under common control) has total assets or annual sales of at least $13.2 million. Those transactions which result in holdings valued in excess of $263.8 million (rather than the currently applicable $253.7 million) will satisfy the larger size of transaction test, at which a transaction is reportable, irrespective of the "size of person" test.

The key adjustments to the jurisdictional tests, notification levels, and filing fee tiers are set forth in the chart below.

BASE HSR THRESHOLDS	CURRENT THRESHOLDS	NEW THRESHOLDS (Effective 2/24/11)
$50 million "size of transaction" test	$63.4 million	$66 million
$10 million "size of person" test	$12.7 million	$13.2 million
$100 million "size of person" test	$126.9 million	$131.9 million
$200 million "size of transaction" test (renders size of person test inapplicable)	$253.7 million	$263.8 million
$50 million notification threshold	$63.4 million	$66 million
$100 million notification threshold	$126.9 million	$131.9 million
$500 million notification threshold	$634.4 million	$659.5 million

25 percent of stock worth $1 billion notification threshold	25 percent of stock (if worth at least $1,268.7 million)	25 percent of stock (if worth at least $1,319 million)
50 percent (if over $50 million) notification threshold	50 percent (if over $63.4 million)	50 percent (if over $66 million)
Level at which $45,000 filing fee is required	Value of the acquisition is greater than $63.4 million but less than $126.9 million	Value of the acquisition is greater than $66 million but less than $131.9 million
Level at which the $45,000 filing fee increases to a $125,000 filing fee	Value of the acquisition is at least $126.9 million but less than $634.4 million	Value of the acquisition is at least $131.9 million but less than $659.5 million
Level at which the $125,000 filing fee increases to a $280,000 filing fee—the highest HSR filing fee tier	Value of the acquisition reaches or exceeds $634.4 million	Value of the acquisition reaches or exceeds $659.5 million
Exemption thresholds applicable to acquisitions of voting securities or assets of foreign issuers; indirect acquisitions of exempt assets	Level ties to a $63.4 million threshold	Level ties to a $66 million threshold

Failure to file an HSR Notification and Report Form is still subject to a statutory penalty of up to $16,000 per day of noncompliance.

The Federal Trade Commission, at the same time, also adjusted the thresholds applicable for Section 8 of the Clayton Act, which trigger prohibitions on interlocking directorates. The Commission also revises those thresholds annually, based on the change in the level of gross national product. Those changes are effective immediately.

Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are now covered by Section 8 if each one has capital, surplus, and undivided profits aggregating more than $26,867,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $2,686,700.

The HSR thresholds are only one part of the analysis to determine whether an HSR filing will be required, and the analysis relating to interlocking directorates under Section 8 of the Clayton Act turns on numerous complex factors, so please contact one of the Cooley Antitrust contacts above with any questions you have.

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