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Interlocking Directorates – Not Just a Section 8 Issue

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I regularly receive queries from clients regarding the legality of director interlocks under Section 8 of the Clayton Act. Section 8, of course, prohibits certain types of interlocking directorates between competitors with the goal of preventing anti-competitive coordination between the two interlocking companies. But a different and perhaps equally important question clients should consider is the potential risk created by interlocking directors under Section 1 of the Sherman Act or Section 5 of the Federal Trade Commission Act. A company's ability to defend an interlock under Section 8 does not necessarily mean that the activities Section 8 was intended to forestall may not still occur — or appear to have occurred — and that may open the door for Sherman or FTC Act claims.