

Insights: Alerts

FTC Updates Merger Filing Thresholds

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On January 15, 2015, the Federal Trade Commission (FTC) announced its updated dollar thresholds to merger filings required by the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act). These thresholds will become effective 30 days after publication in the Federal Register.

The HSR Act established various criteria for determining whether asset acquisitions and merger transactions must be reported to the FTC and the Department of Justice prior to consummation. Generally, whether a transaction is subject to HSR reporting requirements depends on three tests: (1) the in commerce test; (2) the size-of-transaction test; and (3) the size-of-persons test. Parties to a transaction that meet the threshold criteria under these tests must report the transaction to the federal antitrust enforcement agencies and then observe a waiting period to enable the government to analyze the deal's competitive effects. The FTC is required to revise the filing thresholds annually, based on the change in the Gross National Product (GNP).

Reporting Thresholds

Size-of-Transaction Test. A transaction satisfies the reporting threshold under the size-of-transaction test if, through the transaction, the acquiring party would obtain voting securities or assets of another party having a value that exceeds the threshold amount. The recent adjustment to the reporting threshold increases the minimum amount of the deal value to \$76.3 million from \$75.9 million.

Size-of-Persons Test. The new adjustments have also increased the thresholds under this test. A transaction will satisfy the size-of-persons test if one party to the transaction has annual net sales or total assets equal to or exceeding \$15.3 million (up from \$15.2 million), and the other party to the transaction has annual net sales or total assets equal to or exceeding \$ 152.5 million (up from \$151.7 million). In calculating whether a transaction must be reported under this test, the annual net sales and total sales will be based on a party's most recent regularly prepared balance sheet. A transaction exceeding \$305.1 million (up from \$303.4 million) is reportable regardless of the size of the parties.

HSR Filing Fees

The filing fees remain unchanged from 2014. Unlike the filing fee thresholds, which are revised annually, the actual filing fees have not been adjusted in more than a decade.

Revised Interlocking Directorates Thresholds

The FTC also announced revised dollar thresholds for evaluating interlocking directorates under Section 8 of the Clayton Act. Section 8 generally prohibits a person from serving as an officer or director for competing corporations other than banks, banking associations and trust companies. Under Section 8, these thresholds will generally apply if both corporations have capital, surplus, and undivided profits aggregating more than \$31,084,000, and competitive sales of at least \$3,108,400 with certain exceptions. These new thresholds will take effect on the date of publication in the Federal Register.

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