

**ANTITRUST****FTC ANNOUNCES HIGHER HART SCOTT RODINO PREMERGER NOTIFICATION REPORTING THRESHOLDS***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 2014. These new thresholds will become effective on February 24, 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 2014, this threshold has been increased from \$70.9 million to \$75.9 million.

Another threshold that has changed for 2014 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 2014, the minimum “size of the parties” requirement increases from \$14.2 million and \$141.8 in either annual sales or total assets to \$15.2 million and \$151.7 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, this test only applies for transactions valued at less than \$303.4 million (increased from \$283.6 million in 2013); the “size of the parties” exemption does not apply to transactions valued above \$303.4 million.

Finally, the trigger points at which filing fees escalate under the HSR Act will also increase. For 2014, a filing fee of \$45,000 will apply to transactions valued below \$151.7 million, a filing fee of \$125,000 will apply to transactions valued between \$151.7 million and \$758.6 million, and a filing fee of \$280,000 will apply to transactions valued above \$758.6 million.

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

|                                       | 2013 Threshold                                                                                                                                                                                                              | 2014 Threshold                                                                                                                                                                                                              |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>“Size of the Transaction” Test</b> | \$70.9 million                                                                                                                                                                                                              | \$75.9 million                                                                                                                                                                                                              |
| <b>“Size of the Parties” Test</b>     | One “person” with at least \$141.8 million in assets and another with more than \$14.2 million in assets; test applies only for transactions up to \$283.6 million                                                          | One “person” with at least \$151.7 million in assets and another with more than \$15.2 million in assets; test applies only for transactions up to \$303.4 million                                                          |
| <b>Filing Fees</b>                    | <p>The filing fee for a transaction valued below \$141.8 million = \$45,000</p> <p>Transactions valued from \$141.8 million to \$709.1 million = \$125,000</p> <p>Transactions valued above \$709.1 million = \$280,000</p> | <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> |

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 2014, 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 \$29,945,000, unless the competitive sales of either corporation are less than \$2,994,500 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:



|                                                          | 2013 Threshold         | 2014 Threshold         |
|----------------------------------------------------------|------------------------|------------------------|
| <b>"Capital Surplus and Undivided Profits" Threshold</b> | More than \$28,883,000 | More than \$29,945,000 |
| <b>"Competitive Sales" Exception</b>                     | Less than \$2,888,300  | Less than \$2,994,500  |

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FOR MORE INFORMATION CONTACT:



*James M. Burns is a Member of Dickinson Wright PLLC, resident in the firm's Washington, D.C. office. He is the co-leader of the firm's antitrust practice. He can be reached at 202.659.6945 or [jmburns@dickinsonwright.com](mailto:jmburns@dickinsonwright.com)*



*Amy Kwiatkowski is an Associate in Dickinson Wright's Detroit office. Her practice focuses on corporate matters, including mergers and acquisitions. She can be reached at [akwiatkowski@dickinsonwright.com](mailto:akwiatkowski@dickinsonwright.com)*