

HSR Threshold Increases to New Record High of \$68.2 Million, Results in a 3.3% Increase from 2011

HSR Act or Rule Provision	2012 Indexed Value
\$50 million size-of-transaction test	\$68.2 million
\$200 million size-of-transaction test	\$272.8 million
\$100 million size-of-person test	\$136.4 million
\$10 million size-of-person test	\$13.6 million
\$50 million notification threshold	\$68.2 million
\$100 million notification threshold	\$136.4 million
\$500 million notification threshold	\$682.1 million
25% of voting securities valued at \$1 billion notification threshold	\$1,364.1 million
Filing fees	<p>\$45,000 for transactions valued at greater than \$68.2 million but less than \$136.4 million</p> <p>\$125,000 for transactions valued at \$136.4 million or greater but less than \$682.1 million</p> <p>\$280,000 for transactions valued at or in excess of \$682.1 million</p>

The Federal Trade Commission ("FTC") recently announced that the dollar-based thresholds applicable to the Hart-Scott-Rodino ("HSR") premerger notification program will be raised 3.3 percent from the 2011 levels. As a result, the HSR minimum size of transaction threshold will be raised to \$68.2 million from \$66 million. Transactions valued between \$66 million and \$68.2 million will no longer require an HSR filing. The dollar thresholds that determine the applicable filing fee will be revised accordingly.

Simultaneously, the FTC also increased the dollar thresholds under Section 8 of the Clayton Act prohibiting any person from holding positions as an officer or director of competing corporations engaged in commerce, if the corporations meet certain thresholds.

These changes will become effective on February 27, 2012. The new HSR thresholds will apply to transactions that close on or after that date.

HSR Thresholds Raised

The HSR premerger notification program applies to large transactions involving large parties engaged in commerce. Dollar thresholds defining "large" were set in 2000 but were indexed to changes in the gross national product. As a result of this most recent indexing, the HSR Act now provides that transactions resulting in holdings valued in excess of \$272.8 million among parties engaged in commerce are subject to

premerger notification regardless of the size of the parties. Transactions that result in holdings valued in excess of \$68.2 million are reportable only if the acquiring and acquired persons meet the “size-of-person” test — either the acquiring or acquired person must have annual net sales or total assets exceeding \$136.4 million and the other party must have annual net sales or total assets exceeding \$13.6 million. Acquired persons not engaged in manufacturing relying on the \$13.6 million test must meet it on the basis of assets alone. Certain transactions meeting these size thresholds may nevertheless be exempt under the HSR Act; these exemptions are not affected by indexing.

Revised Rules for Interlocking Directorates

Section 8 of the Clayton Act generally prohibits a person from serving simultaneously as a director or officer of two sizable competing corporations engaged in commerce, unless their “competitive sales” — the gross revenues for all products and services sold by one corporation in competition with the other — are minimal. As with the HSR Act, the dollar thresholds defining “sizable” and “minimal” are indexed to changes in the gross national product. As a result of the most recent indexing, the Section 8 prohibition on interlocking directorates now applies only if each competing corporation has capital, surplus, and undivided profits aggregating more than \$13.6 million. The interlocking directorate prohibition does not apply, however, if either corporation’s “competitive sales” are less than \$1.36 million. Other “safe harbors” exist based on competitive sales as a percentage of total sales.

The FTC’s press release announcing the indexing changes to the HSR thresholds and the interlocking directorates thresholds may be accessed by clicking on the link below. The link to the press release allows access to the FTC’s official announcement. Links to our summaries of prior indexing announcements are also provided below.

[FTC Announces Revised Thresholds for Clayton Act Antitrust Reviews](#)

[HSR Minimum Threshold Rises to Record High of \\$66 Million: Results in Increase of 4.1% from 2010](#)
(January 2011)

[HSR Threshold Drops for the First Time: Revised Minimum Threshold of \\$63.4 Million Results in a 2.8% Decrease from 2009](#)
(January 2010)

[HSR Threshold Rises Above \\$65 Million, Results in a 3.3% Increase; HSR Civil Penalty Raised by Almost 50%](#)
(January 2009)

[HSR Threshold Breaks \\$60 Million Mark: Annual Revision to HSR Thresholds Results in Second Consecutive 5.5% Increase](#)
(January 2008)

[Annual Revision to HSR Thresholds Results in 5.5% Increase from 2006](#)
(January 2007)

[Changes to the HSR Rules Benefit Filing Parties](#)
(January 2006)

Provision under Section 8 of the Clayton Act	2012 Indexed Value
Capital, surplus and undivided profits aggregating more than \$10,000,000, under Section 8(a)(1)	\$27,784,000
Competitive sales of either corporation are less than \$1,000,000 under Section 8(a)(2)(A)	\$2,778,400

Practice group contacts

If you have questions regarding the information in this legal update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed. Visit us at www.dechert.com/antitrust.

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