



FTC Revises HSR and Interlocking Directorate Thresholds

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HSR Revisions

The Federal Trade Commission (“FTC”) recently announced the annual changes to the notification thresholds for filings under the Hart-Scott-Rodino Antitrust Improvements Act (“HSR”), as well as certain other values under the HSR rules. As background, the HSR Act requires that acquisitions of voting securities or assets that exceed certain thresholds be disclosed to U.S. antitrust authorities for review before they can be completed. The “size-of-transaction threshold” requires that the transaction exceeds a certain value. Under certain circumstances, the parties involved also have to exceed “size-of-person thresholds.” This year’s values, which are adjusted annually based on changes in the GNP, take effect on February 27, 2012. The FTC also adjusted the safe harbor thresholds that govern interlocking directorates in competing companies.

The most important change is that the minimum size-of-transaction threshold will increase from the current \$66 million to \$68.2 million. The size-of-person thresholds will also increase as follows:

- For transactions valued between \$68.2 million and \$272.8 million, one party to the transaction must have \$13.6 million in sales or assets and the other party must have \$136.4 million in sales or assets, as reported on the last regularly prepared balance sheet or income statement.
- For transactions valued at greater than \$272.8 million, no size-of-person threshold must be met to require an HSR filing.

The filing fee thresholds have similarly increased as follows:

Filing Fee	Transaction Value
\$45,000	\$68.2 to \$136.4 million
\$125,000	\$136.4 to \$682.1 million
\$280,000	\$682.1 million or greater

Underscoring the importance of compliance with the HSR Act, this past December the Department of Justice, on behalf of the FTC, signed a consent decree with the CEO



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of Comcast requiring him to pay a \$500,000 civil penalty for failing to file under the HSR Act. The CEO exceeded the notification threshold through his acquisition of common stock upon the vesting of outstanding restricted stock unit awards and the reinvestment of dividends and short-term interest through his 401(k) account. Violations of the HSR Act are subject to a \$16,000/day civil penalty, though most often an inadvertent failure to file will not result in civil penalty. In its complaint, the DOJ highlighted the fact that the CEO had missed filing obligations in the past and therefore civil penalties for this violation were warranted.

Interlocking Directorates

Section 8 of the Clayton Act generally prohibits one person from serving as a director or officer of two competing corporations if two thresholds are met – one relates to the companies' profitability and one relates to the amount of competitive sales between the companies. The statute requires the FTC to revise these thresholds annually, also based on changes to the GNP. Effective immediately, only companies with capital, surplus, and undivided profits aggregating more than \$27,784,000 are covered by Section 8, and a violation can be found only if the competitive sales of each company are \$2,778,400 or greater.

If you have any questions concerning this briefing, please contact Jay Levine at jlevine@babbc.com or Michael Denniston at mdenniston@babbc.com.

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