

FTC INCREASES HSR THRESHOLDS AND PENALTY, AND SECTION 8 THRESHOLDS

The Federal Trade Commission (the “FTC”) has announced revised thresholds applicable to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), and has increased the civil penalty for violations of the HSR Act. In addition, it has increased thresholds relating to the application of Section 8 of the Clayton Act, which prohibits certain interlocking directorates. The FTC’s complete announcement concerning the threshold adjustments to the HSR Act and Section 8 of the Clayton Act can be accessed on the FTC’s website via <http://www.ftc.gov/opa/2009/01/claytonact.shtm>.

HSR Act Thresholds and Penalty

The new HSR Act thresholds will become effective February 12, 2009. The revisions include the increase of the minimum notification threshold under the HSR Act from \$63.1 million to \$65.2 million. Thus, an acquisition may trigger an HSR reporting obligation only if, as a result of an acquisition, an acquirer would hold voting securities, noncorporate interests and/or assets of an acquired person valued in excess of \$65.2 million. The following table sets forth the principal threshold adjustments applicable to the HSR Act.

Threshold	Original Threshold	2008 Threshold	2009 Adjusted Threshold
Minimum Size of Transaction	\$50 million	\$63.1 million	\$65.2 million
Minimum Size of Transaction (above which the Size of Person Test does not apply)	\$200 million	\$252.3 million	\$260.7 million
Size of Person Test (applicable to transactions valued at not more than \$260.7 million)	Person 1: \$10 million	\$12.6 million	\$13.0 million
	Person 2: \$100 million	\$126.2 million	\$130.3 million

Notification Thresholds	\$50 million	\$63.1 million	\$65.2 million (\$45,000 filing fee)
	\$100 million	\$126.2 million	\$130.3 million (\$125,000 filing fee)
	\$500 million	\$630.8 million	\$651.7 million (\$280,000 filing fee)
	25% or more of an issuer's voting securities if valued in excess of \$1 billion	25% or more of an issuer's voting securities if valued in excess of \$1,261.5 million	25% or more of an issuer's voting securities if valued in excess of \$1,303.4 million (\$280,000 filing fee)

Wherever the rules and regulations promulgated under the HSR Act include thresholds or limitation values (for example, the exemptions that may be available for certain acquisitions of (i) foreign assets or stock of foreign issuers where the exemptions are dependent upon the nexus to U.S. commerce or (ii) carbon-based reserves), those thresholds and limitation values are similarly being adjusted.

The FTC also announced that the civil penalties for violations of the HSR Act are being increased from \$11,000 per day to \$16,000 per day, effective February 9, 2009, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990. The increase is described more fully on the FTC's website via <http://www.ftc.gov/opa/2008/12/civilpenalty.shtm>.

Section 8 Thresholds

Section 8 prohibits a person from serving as a director or officer of competing corporations if certain thresholds are met and an exemption does not otherwise apply. Under the new thresholds, effective January 13, 2009, competing corporations are covered by Section 8 if each corporation's capital, surplus and undivided profits exceed \$26,161,000 in the aggregate, unless one of the corporations has competitive sales of less than \$2,616,100.

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If you have any questions about these announcements, or the HSR Act generally, please contact Jonathan J. Konoff (212-728-8627, jkonoff@willkie.com) or the attorney with whom you regularly work.

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