

CLIENT MEMORANDUM

FTC Revises HSR Thresholds and Section 8 Thresholds

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AUTHOR

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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”). As statutorily mandated, the various thresholds incorporated in the HSR Act and its rules and regulations are revised annually based on the change in the U.S. gross national product. In addition, the FTC has revised the thresholds relating to the application of Section 8 of the Clayton Act, which prohibits certain interlocking directorates and officerships. The Federal Register has published the revisions, and those notices can be accessed through the FTC’s website via [here](#) and [here](#).

HSR Act Thresholds

The new HSR Act thresholds will become effective for any transaction that closes on or after February 24, 2014. Most significantly, the minimum notification threshold under the HSR Act will increase from \$70.9 million to \$75.9 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 (but only where “control” of a noncorporate entity would pass to the acquiring person as a result of the acquisition), and/or assets of an acquired person valued in excess of \$75.9 million. The following table sets forth the principal threshold adjustments applicable to the HSR Act.

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| Threshold | Original Threshold | 2013 Threshold | 2014 Adjusted Threshold |
|--|---|---|---|
| Minimum Size of Transaction | \$50 million | \$70.9 million | \$75.9 million |
| Minimum Size of Transaction (above which the Size of Person Test does not apply) | \$200 million | \$283.6 million | \$303.4 million |
| Size of Person Test (applicable to transactions valued at not more than \$303.4 million) | Person 1: \$10 million | \$14.2 million | \$15.2 million |
| | Person 2: \$100 million | \$141.8 million | \$151.7 million |
| Notification Thresholds | \$50 million | \$70.9 million | \$75.9 million (\$45,000 filing fee) |
| | \$100 million | \$141.8 million | \$151.7 million (\$125,000 filing fee) |
| | \$500 million | \$709.1 million | \$758.6 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 \$1,418.1 million | 25% or more of an issuer's voting securities if valued in excess of \$1,517.1 million (\$280,000 filing fee) |

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Any monetary or limitation value included in a rule or regulation promulgated under the HSR Act that includes the term “(as adjusted)” (for example, the exemption that may be available for certain acquisitions of foreign assets or stock of foreign issuers where the exemption is dependent upon the nexus to U.S. commerce) has also been adjusted and will become effective on February 24, 2014.

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 apply. Pursuant to the new thresholds, effective January 23, 2014, competing corporations are covered by Section 8 if each corporation’s capital, surplus, and undivided profits exceeds \$29,945,000 in the aggregate, unless one or more of the following exemptions apply: (i) one of the corporations has competitive sales of less than \$2,994,500; (ii) the competitive sales of either corporation are less than 2% of that corporation’s total sales; or (iii) the competitive sales of each corporation are less than 4% of that corporation’s total sales.

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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