

FTC Announces Increases to Thresholds for Pre-Merger Notification and Limitations on Interlocking Directorates

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On Jan. 21, 2011, the Federal Trade Commission (FTC) made its annual announcement of revisions to thresholds that determine whether companies must abide by the pre-merger filing and waiting-period requirements of the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act), as amended. The FTC is required to revise these thresholds annually based on changes in gross domestic product.

This year, the “size-of-transaction” threshold increased from \$63.4 million to \$66 million. As a result, the HSR Act notification and waiting requirements will apply to transactions that result in the acquiring party holding assets or voting securities of the acquired person valued at more than \$66 million.

The “size of person” test is now applicable to transactions valued at \$263.8 million or less (up from \$253.7 million). Where the “size-of-person” test applies (to transactions valued at \$263.8 million), compliance with HSR Act rules is required when one of the parties has total assets or net sales of at least \$13.2 million and the other has total assets or net sales of at least \$131.9 million.

The HSR Act filing fees remain the same but are based on the revised thresholds, as follows:

Value of Transaction	Filing Fee
More than \$66 million but less than \$131.9 million	\$45,000
\$131.9 million but less than \$659.5 million	\$125,000
More than \$659.5 million	\$280,000

The FTC also announced revisions to thresholds triggering the Clayton Act’s interlocking directorate provision that prevents the same person from serving as an officer or board member of two or more competing companies. The prohibition now covers circumstances where each corporation has “capital, surplus, and undivided profits” aggregating more than \$26,867,000 unless either corporation has less than \$2,686,700 “competitive sales.”

The revised thresholds will become effective 30 days after publication in the Federal Register and apply to all transactions that close on or after the effective date, which will be Feb. 21.

The FTC announcement is [available here](#).

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