

January 2009

# Antitrust Alert



## Revised Jurisdictional Thresholds for Section 7A and Section 8 of the Clayton Act

### Revised Jurisdictional Thresholds for Section 7A and Section 8 of the Clayton Act

On Jan. 6th of this year, the Federal Trade Commission (FTC) announced revised jurisdictional thresholds triggering premerger notification and waiting period requirements under Section 7A of the Clayton Act, 15 U.S.C. 18a (the HSR Act) and interlocking directorate prohibitions under Section 8 of the Clayton Act, 15 U.S.C. 19 (Section 8).

#### Premerger Notification and Waiting Period

Under the HSR Act, mergers and acquisitions of assets, voting securities, and other non-corporate interests above certain dollar thresholds must be reported to the FTC and the Department of Justice so that the potential competitive implications of the transaction can be assessed prior to the parties' consummation of their transaction. Section 7A(a)(2) of the Clayton Act requires that these thresholds be revised annually.

The new thresholds, which were published in the Federal Register on Jan. 13, 2009 and become effective on Feb. 12, 2009, are summarized in the chart set forth below. Most significantly, these revisions change the minimum "size of the transaction" test from \$63.1 million to \$65.2 million. Accordingly, all transactions valued below \$65.2 million are now exempt from the HSR Act reporting requirements. Other significant changes increase the "size of the person" reporting thresholds and the size of the transaction at which the corresponding filing fees required under the HSR Act have been adjusted.

	<u>Current Threshold</u>	<u>New Threshold</u>
"Size of Transaction" Test	\$63.1 Million	\$65.2 Million
"Size of Person" Test	One "person" with \$126.2 million in assets and the other with \$12.6 million	One "person" with \$130.3 million in assets and the other with \$13.0 million

Antitrust Alert. Copyright 2009. Williams Mullen. Editorial inquiries should be directed to James M. Burns at [jmburns@williamsmullen.com](mailto:jmburns@williamsmullen.com) or 202.327.5087.

The Antitrust Alert is provided as an educational service and is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.

Please visit [www.williamsmullen.com](http://www.williamsmullen.com) for more information about the Williams Mullen Antitrust Law Team.

**Williams Mullen  
Antitrust Team**

HSR Filing Fees	The fee for a transaction valued at or above:	The fee for a transaction valued at or above:
	\$ 63.1M = \$45,000	\$65.2M = \$45,000
	\$ 126.2M = \$125,000	\$130.3M = \$125,000
	\$ 630.8M = \$280,000	\$651.7M = \$280,000

### Interlocking Directorates

Under Section 8, individuals are prohibited from serving as a director or officer of two competing corporations if two jurisdictional thresholds are met. The Clayton Act requires the FTC to revise these thresholds annually.

The new thresholds, which were published in the Federal Register on Jan. 13, 2009 and became effective on that date, prohibit a person from serving as a director or officer in any two corporations that are competitors if each corporation has capital, surplus, and undivided profits aggregating more than \$26,261,000, with the exception that no such prohibition applies if the competitive sales of either corporation are less than \$2,616,100.

	<u>Original Threshold</u>	<u>New Threshold</u>
“Capital Surplus, and Undivided Profits” Test	More than \$10,000,000	More than \$26,261,000
“Competitive Sales” Test	Less than \$1,000,000	Less than \$2,616,100

For more information, please see the FTC’s news release announcing the revised jurisdictional thresholds for the HSR Act and Section 8, which may be found at:

<http://www.ftc.gov/opa/2009/01/claytonact.shtm>

*For more information on this topic and other matters pertaining to antitrust law, please contact issue editor James M. Burns, Matthew H. Leggett or any member of the Williams Mullen Antitrust Team.*

**James M. Burns, Chair**  
202.327.5087  
jmburns@williamsmullen.com

**James R. Cannon, Jr.**  
202.293.8123  
jcannon@williamsmullen.com

**Patrick C. Devine, Jr.**  
757.629.0614  
pdevine@williamsmullen.com

**Arlene J. Diogesy**  
919.981.4096  
adiogesy@williamsmullen.com

**Patrick R. Hanes**  
804.783.6455  
phanes@williamsmullen.com

**M. Keith Kapp**  
919.981.4024  
kkapp@williamsmullen.com

**Matthew H. Leggett**  
202.293.8134  
mleggett@williamsmullen.com

**Eliot Norman**  
804.783.6482  
enorman@williamsmullen.com

**William A. Old, Jr.**  
757.629.0613  
wold@williamsmullen.com

**Robert W. Shaw**  
919.981.4310  
rshaw@williamsmullen.com

**Brian C. Vick**  
919.981.4023  
bvick@williamsmullen.com

**John L. Walker III**  
804.783.6463  
jwalker@williamsmullen.com