

## Competition - USA

Federal Trade Commission announces changes to jurisdictional thresholds

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On January 21 2011 the Federal Trade Commission released the annual jurisdictional adjustments for pre-merger notification filings made pursuant to Section 7A of the Clayton Act, known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as well as for Section 8 of the Clayton Act. The new thresholds for Hart-Scott-Rodino notification were published in the *Federal Register* on January 25 2011 and will become effective on February 24 2011. The revisions to Section 8 became effective upon publication in the *Federal Register* on January 25.

### Hart-Scott-Rodino notification thresholds

Under the Hart-Scott-Rodino Act, certain acquisitions of assets, voting securities or interests in non-corporate entities are subject to pre-merger notification filing and waiting period requirements if the applicable jurisdictional thresholds are satisfied and no exemption applies.

Each year the Federal Trade Commission adjusts the Hart-Scott-Rodino jurisdictional threshold tests based on changes to the US gross national product for the most recent fiscal year compared to the gross national product for the fiscal year ending September 30 2003. The threshold changes do not affect the amount of the applicable Hart-Scott-Rodino filing fees to be paid, but do affect the threshold levels applicable to each of the filing fees.

The principal changes to the Hart-Scott-Rodino jurisdictional thresholds are set out below.

	Current threshold	New threshold effective on February 24
Size-of-transaction threshold test	Notification may be required if the acquiring person will acquire and hold certain assets, voting securities or interests in non-corporate entities valued at more than \$63.4 million.	\$66 million.
Size-of-person threshold test	Generally, one party to the transaction must have at least \$126.9 million in total assets or annual net sales, and the other must have at least \$12.7 million in total assets or annual net sales.	At least \$131.9 million and \$13.2 million in total assets or annual net sales.
	Transactions valued at more than \$253.7 million are not subject to the size-of-person threshold test and are therefore reportable unless exempt.	\$263.8 million.
Filing fee threshold levels	Hart-Scott-Rodino filing fee of \$45,000 for transactions where the acquiring person will hold an aggregate total amount of assets, voting securities or controlling non-corporate interests valued at more than \$63.4 million, but less than \$126.9 million.	More than \$66 million, but less than \$131.9 million. Hart-Scott-Rodino filing fees remains unchanged.
	Hart-Scott-Rodino filing fee of \$125,000 for transactions where the acquiring person will hold an aggregate total amount of assets,	More than \$131.9 million, but less than \$659.5 million.

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voting securities or controlling non-corporate interests valued at \$126.9 million or more, but less than \$634.4 million.	Hart-Scott-Rodino filing fee remains unchanged.
Hart-Scott-Rodino filing fee of \$280,000 for transactions where the acquiring person will hold an aggregate total amount of assets, voting securities or controlling non-corporate interests valued at \$634.4 million or more.	At \$659.5 million or more. Hart-Scott-Rodino filing fee remains unchanged.
When completing a Hart-Scott-Rodino filing, the acquiring person in a voting securities acquisition must indicate which notification threshold it will cross: \$63.4 million, \$126.9 million, \$634.4 million, 25% (if the value of the voting securities to be held is greater than \$1,268.7 million) or 50%. These notification thresholds are also relevant to a certain Hart-Scott-Rodino exemption.	The new notification thresholds are \$66 million, \$131.9 million, \$659.5 million, 25% (if the value of the voting securities to be held is greater than \$1,319 million) or 50%.

### Interlocking directorates threshold

Section 8 of the Clayton Act prohibits a person from serving as a director or officer of two competing corporations if certain thresholds are satisfied and no exemption applies. The Federal Trade Commission is required to adjust annually certain thresholds related to Section 8 based on changes to the gross national product compared to the gross national product for the fiscal year ending September 30 1989.

Under the new thresholds that became effective on January 25 2011, a person may not serve as a director or officer of competing corporations if each corporation has capital, surplus and undivided profits aggregating more than \$26.867 million, unless one of the corporations has competitive sales of less than \$2,686,700. Previously, a person was prohibited from serving as a director or officer of competitive corporations if each corporation had capital, surplus and undivided profits aggregating more than \$25.841 million, unless one of the corporations had competitive sales of less than \$2,584,100.

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