

HSR Thresholds Will Increase to Highest Levels for Transactions in 2014

By Michael L. Sibarium, Aileen (Chuca) Meyer, Alvin Dunn, and Jeetander T. Dulani

On February 24, 2014, revised thresholds for the Hart-Scott-Rodino Act (“HSR”) will take effect. The thresholds determine whether parties involved in proposed mergers, consolidations, or other acquisitions of voting securities, assets, or unincorporated interests must notify the Federal Trade Commission (“FTC”) and the Antitrust Division of the Department of Justice (“DOJ”) of a proposed transaction and comply with a mandatory waiting period before the transaction can be consummated.

HSR Thresholds Raised. Generally, a transaction will not be reportable under the new thresholds unless it is valued for HSR purposes at more than \$75.9 million. If the value of the proposed transaction is at least \$75.9 million but less than \$303.4 million, the transaction will not be reportable unless the “ultimate parents” of the acquiring and the acquired firms also meet a certain minimum “size-of-person” test—in most instances, where one parent (including all entities it controls) has net sales or total assets of at least \$15.2 million and the other has net sales or total assets of \$151.7 million. Where the jurisdictional tests are met, the transactions are reportable unless an exemption applies. The table below includes the original and the new adjusted figures for each relevant HSR threshold. Parties should be mindful that there are many other factors that impact whether a given transaction is subject to the jurisdictional thresholds in addition to these dollar thresholds.

Original Threshold	Revised Threshold*	Relevance
\$10 million	\$15.2 million	<ul style="list-style-type: none"> Size-of-person test
\$50 million	\$75.9 million	<ul style="list-style-type: none"> Size-of-transaction test Minimum HSR notification threshold Foreign size-of-transaction exemption
\$100 million	\$151.7 million	<ul style="list-style-type: none"> Size-of-person test Intermediate HSR notification threshold

Original Threshold	Revised Threshold*	Relevance
\$110 million	\$166.9 million	▪ Foreign size-of-person exemption
\$200 million	\$303.4 million	▪ Size-of-person test cap
\$500 million	\$758.6 million	▪ Maximum HSR notification threshold
\$1 billion	\$1.5171 billion	▪ 25% of voting securities valued at \$1 billion notification threshold

*The revised thresholds will take effect on February 24, 2014. The revised HSR thresholds reflect the adjusted jurisdictional requirements, based on the change in the gross national product, for determining whether a proposed transaction must be reported under HSR and, if so, the required filing fee.

HSR Filing Fees. The filing fees for reportable transactions will be as follows:

- \$45,000 Transactions valued in excess of \$75.9 million but less than \$151.7 million.
- \$125,000 Transactions valued in excess of \$151.7 million but less than \$758.6 million.
- \$280,000 Transactions valued at \$758.6 million or more.

Revised Thresholds for Interlocking Directorates. Section 8 of the Clayton Act generally prohibits companies that compete with each other from having interlocking memberships on their corporate boards of directors. The FTC annually revises the jurisdictional thresholds that trigger the interlocking directorate prohibition. The changes to the thresholds are based on the change in the gross national product and are effective immediately.

- Section 8(a)(1) of the Clayton Act prohibits a person from serving as a director or board-elected or board-appointed officer of two or more corporations if the combined capital, surplus, and undivided profits of each of the corporations exceeds \$29,945,000.
- Section 8(a)(2)(A) of the Clayton Act exempts interlocks for which the competitive sales of either corporation are less than \$2,994,500.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

Michael L. Sibarium **(bio)**
Washington, DC
+1.202.663.9202
michael.sibarium@pillsburylaw.com

Aileen (Chuca) Meyer **(bio)**
Washington, DC
+1.202.663.9227
chuca.meyer@pillsburylaw.com

Jeetander T. Dulani **(bio)**
Washington, DC
+1.202.663.8383
jeetander.dulani@pillsburylaw.com

Alvin Dunn **(bio)**
Washington, DC
+1.202.663.8355
alvin.dunn@pillsburylaw.com

Roxane A. Polidora **(bio)**
San Francisco
+1.415.983.1976
roxane.polidora@pillsburylaw.com

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