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FTC Revises Merger Filing and Interlocking Directorate Thresholds

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Parties to merger and acquisition transactions meeting certain size thresholds must notify the Federal Trade Commission and Antitrust Division of the Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"). The statute requires the FTC to revise the thresholds annually based upon changes in gross national product. Today,[1] the FTC published this year's thresholds in the Federal Register. The following chart shows the adjusted thresholds that will apply for each original threshold:

Original Threshold	2015 Adjusted Threshold
$10 million	$15.3 million
$50 million	$76.3 million
$100 million	$152.5 million
$110 million	$167.8 million
$200 million	$305.1 million
$500 million	$762.7 million
$1 billion	$1,525.3 million

Under the new thresholds, a notification must generally be filed pursuant to the HSR Act when a buyer will hold voting securities or assets valued in excess of $76.3 million as a result of the transaction, so long as the respective parties have in excess of $15.3 million and $152.5 million in either net annual sales or total assets. Acquisitions valued above

[1] This memo was originally released January 21, 2015.

$305.1 million require notification irrespective of the size of the parties involved, unless an exemption applies. For each notification, the acquiring party must indicate which of the following thresholds the transaction will exceed: (a) $76.3 million, (b) $152.5 million, (c) $762.7 million, (d) 25% of the target's voting securities (if valued in excess of $1,525.3 million), or (e) 50% of the target's voting securities. The filing fees remain unchanged, but will apply to the new thresholds: $45,000 for transactions in excess of $76.3 million, $125,000 for transactions of at least $152.5 million, and $280,000 for transactions valued at $762.7 million or more. The adjusted merger filing thresholds will take effect on February 20, 2015.

The FTC also announced revised thresholds under Section 8 of the Clayton Act, which generally prohibits an individual from serving as a director or officer of two competing corporations which meet certain *de minimis* thresholds. Under the revised thresholds, simultaneous service as a director or officer of two corporations each with capital, surplus, and undivided profits in excess of $31,084,000 and "competitive sales" of $3,108,400 or more is prohibited, subject to several exceptions. In particular, if the "competitive sales" of either corporation are less than 2% of that corporation's total sales, or less than 4% of each corporation's total sales, the interlock is exempt. In addition, the statute expressly prohibits service on competing *corporations*, not other business structures (*e.g.* partnerships or LLCs). Finally, Section 8 provides a one-year grace period for an individual to resolve an interlock issue that arises as a result of entry into new markets. The revised Section 8 thresholds are effective immediately.

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