

## *Client Alert*

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

On January 16, 2007, the Federal Trade Commission (FTC) announced the revised jurisdictional thresholds for pre-merger reporting pursuant to the Hart-Scott-Rodino Act (HSR Act). Section 7A of the Clayton Act, 15 U.S.C. 18a, requires parties to file pre-merger notification with the Bureau of Competition of the FTC and the United States Department of Justice, Antitrust Division (DOJ) prior to the consummation of any corporate transaction that meets the threshold requirements. Section 7A(a)(2) requires the FTC to revise the reporting thresholds on an annual basis to reflect changes in the gross national product.

In addition to revising the jurisdictional thresholds for Section 7A, the FTC also announced revised thresholds for Section 8 interlocking directorates, as mandated by Section 8(a)(5). Section 8(a)(1) of the Clayton Act prohibits an individual from serving on the directorship of two or more corporations, other than banks, banking associations, and trust companies, if the corporations are engaged in commerce, are competitors, and meet the undivided profits threshold. Section 8(a)(2) exempts an individual from the Section 8(a)(1) restriction when the competitive sales of either corporation are less than two percent of that corporation's sales, the competitive sales of each corporation are less than four percent of that corporation's total sales, or the competitive sales of either corporation are less than a threshold amount (adjusted annually).

The new jurisdictional thresholds for Section 7A and Section 8 will apply to any transaction closing on or after February 21, 2007.

### **The Size-of-Transaction Threshold**

#### *Section 7A*

The Section 7A size-of-transaction threshold has been increased to reflect changes in the gross national product during the year 2006. For transactions closing on or after February 15, 2007, a transaction value of greater than \$59.8 million will trigger the reporting requirements of the HSR Act, an increase from the prior threshold transaction value of greater than \$56.7 million. The revised threshold establishes an absolute floor of \$59.8 million, meaning that there is no HSR Act reporting requirement for any transaction valued at \$59.8 million or less, regardless of the percentage of assets or voting securities to be acquired.

#### *Section 8*

The Section 8 undivided profits threshold has also been increased to reflect changes in the gross national product. The FTC has increased the undivided profits threshold for Section 8(a)(1) to \$24,001,000 and the competitive sales threshold for exemption under Section 8(a)(2)(a) to \$2,400,100.

## The Size-of-Person Threshold

Pursuant to the revised jurisdictional thresholds, the size-of-person test is only applicable when the transaction value exceeds \$59.8 million but is less than \$239.2 million. When the transaction value falls within this range, the transaction must be reported under the HSR Act if one person to the transaction has total assets or net sales of \$119.6 million or more and the other has total assets or net sales of \$12 million or more. This adjustment reflects an increase from the previous total assets/net sales thresholds of \$113.4 million and \$11.3 million, respectively. If the transaction value falls within the prescribed range, but one of the parties does not meet the size-of-person threshold, the transaction will not be subject to pre-merger notification. Any transaction that is valued at more than \$239.2 million will be reportable under the HSR Act without application of the size-of-person test.

## Filing Fees

The FTC has adjusted the tiered filing fee structure to accord with the adjustments to the jurisdictional thresholds. The new filing fees are as follows:

<b>Value of Transaction</b>	<b>Filing Fee</b>
Less than \$119.6 million	\$45,000
\$119.6 million to less than \$597.9 million	\$125,000
\$597.9 million or more	\$280,000

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## For Additional Information

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