

January 14, 2013

FTC Announces New Hart-Scott-Rodino and Clayton Act Section 8 Thresholds

The Federal Trade Commission (the “FTC”) has revised the jurisdictional and filing fee thresholds of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) and the Premerger Notification Rules (the “Rules”). The adjustments to the dollar thresholds of the HSR Act and Rules (based on changes in the gross national product) are required by the 2000 amendments to the HSR Act. For 2013, the thresholds will increase as a result of the increase in the GNP. The new thresholds take effect on February 11, 2013 and will apply to transactions that close on or after that date.

The HSR Act requires parties intending to merge or to acquire assets, voting securities or certain non-corporate interests to notify the FTC and the Department of Justice, Antitrust Division, and to observe certain waiting periods before consummating the acquisition if certain filing thresholds are met. Notification and Report Forms must be submitted by the parties to a transaction if both the (1) size of transaction and (2) size of parties thresholds are met, unless an exemption from filing applies.

1. Size of Transaction

The minimum size of transaction threshold is \$70.9 million, increased from the 2012 threshold of \$68.2 million.

2. Size of Parties

The size of parties threshold is inapplicable if the value of the transaction exceeds \$283.6 million (formerly \$272.8 million for 2012). For transactions with a value between \$70.9 million and \$283.6 million, the size of parties threshold must be met and will be satisfied in one of the following three ways:

| | I | II | III |
|--------------------------|--|---|--|
| <i>Acquiring Person:</i> | \$141.8 million annual net sales or total assets | \$141.8 million annual net sales or total assets | \$14.2 million annual net sales or total assets |
| | <i>and</i> | <i>and</i> | <i>and</i> |
| <i>Acquired Person:</i> | \$14.2 million total assets | a manufacturer with \$14.2 million annual net sales or total assets | \$141.8 million annual net sales or total assets |

The various jurisdictional thresholds, notification thresholds, filing fee thresholds and thresholds applicable to certain exemptions will also increase as summarized in Appendix A to this memorandum.

The FTC has also increased, effective immediately, the thresholds that prohibit, with certain exceptions, competitor companies from having interlocking relationships among their directors or officers under Section 8 of the Clayton Act. Section 8 provides that no person shall, at the same time, serve as a director or officer in any two corporations that are competitors, such that elimination of competition by agreement between them would constitute a violation of the antitrust laws. There are several “safe harbors” which render the prohibition inapplicable under certain circumstances, such as when the size of the corporations, or the size and degree of competitive sales between them, are below certain dollar thresholds. Competitor corporations are now subject to Section 8 if each one has capital, surplus, and undivided profits aggregating more than \$28,883,000, although no corporation is covered if the competitive sales of either corporation are less than \$2,888,300. Even when the dollar thresholds are exceeded, other exceptions preventing the applicability of Section 8 may be available (e.g., the percentage of competitive sales relative to total sales).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Any questions concerning these changes or the premerger notification requirements of the HSR Act should be addressed to any of the following:

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APPENDIX A**Summary of Revised Jurisdictional Thresholds of the HSR Act and Rules**

| <u>Relevant Section of HSR Act or Rules</u> | <u>Original Thresholds</u> | <u>2012 Thresholds</u> | <u>2013 Thresholds</u> |
|---|---|---|---|
| §7A(a)(2)(A) size of transaction test | \$200 million | \$272.8 million | \$283.6 million |
| §7A(a)(2)(B)(i) size of transaction test | \$50 million | \$68.2 million | \$70.9 million |
| §7A(a)(2)(B)(ii) size of parties test | \$10 million | \$13.6 million | \$14.2 million |
| §7A(a)(2)(B)(ii) size of parties test | \$100 million | \$136.4 million | \$141.8 million |
| §7A note -- filing fee thresholds* | \$50 million \$100 million \$500 million | \$68.2 million \$136.4 million \$682.1 million | \$70.9 million \$141.8 million \$709.1 million |
| Thresholds and limitation values in the Rules (16 C.F.R. Parts 801-803)** | \$10 million \$50 million \$100 million \$110 million \$200 million \$500 million \$1 billion | \$13.6 million \$68.2 million \$136.4 million \$150.1 million \$272.8 million \$682.1 million \$1,364.1 million | \$14.2 million \$70.9 million \$141.8 million \$156.0 million \$283.6 million \$709.1 million \$1,418.1 million |

* The filing fee amounts, which are currently \$45,000, \$125,000 and \$280,000, remain unchanged. For transactions valued at more than \$70.9 million, but less than \$141.8 million, the filing fee is \$45,000. For transactions valued at \$141.8 million or more, but less than \$709.1 million, the filing fee is \$125,000. For transactions valued at \$709.1 million or more, the filing fee is \$280,000.

** The \$200 million and \$500 million limitations set forth in Rule 802.3 for acquisitions of certain carbon-based mineral reserves remain unchanged.