

HSR Update: Annual Jurisdictional Thresholds Revisions Effective Late-March/Early-April 2019

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Increase in HSR Thresholds. The Federal Trade Commission recently announced its annual adjustments to the jurisdictional thresholds for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). The new thresholds are expected to be published in the Federal Register in the upcoming week and will become effective 30 days after publication (the **“Effective Date”**). The revised thresholds will remain in effect until the next annual adjustment, expected in the first quarter of 2020.

- **“Size of Transaction” Threshold.** Under the new thresholds, the minimum “size of transaction” requiring an HSR filing has increased from \$84.4 million to \$90.0 million. For most purposes, a transaction will be reportable only if, as a result of such transaction, the acquiring person will hold voting securities, assets, or noncorporate interests valued above \$90.0 million.
- **“Size of Person” Threshold.** For transactions valued between \$90.0 million and \$359.9 million, the “size of person” test must also be met for a premerger notification filing to be required. With the new thresholds, a transaction will generally meet the “size of person” test if one person (either acquiring or acquired) has annual net sales or total assets equal to or exceeding \$180.0 million, and the other person has annual net sales or total assets equal to or exceeding \$18.0 million. However, if the acquired person is not engaged in manufacturing, the acquired person must have total assets over \$18.0 million to meet the lower side of the threshold (annual net sales are not relevant for the acquired person to meet the lower side of the threshold, but they are relevant with respect to whether the acquired person meets the higher side of the threshold). If the transaction is valued above \$359.9 million, the “size of person” test does not need to be met for premerger notification to be required.
- **Increase in Civil Penalties for HSR Act Violations.** The FTC also increased the maximum civil penalty for violations of the HSR Act to \$42,530 per day. The higher penalty amount will apply to any civil penalties adjudicated after the Effective Date of the adjusted thresholds, and it will apply to violations that predate the Effective Date.
- **Increase in Interlocking Directorates Thresholds.** The FTC also revised the thresholds that trigger the Clayton Act’s prohibition on interlocking directorates (service as a director or officer of two competing corporations). The new thresholds are \$36,564,000 for Section 8(a)(1) and \$3,656,400 for Section 8(a)(2)(A), and the revised thresholds become effective on the Effective Date.
- **Filing Fees.** The filing fees remain unchanged, but the FTC adjusted the fee structure to reflect the new thresholds. The filing fees and updated transaction value ranges are as follows:

Filing Fee	2018 Size of Transaction Thresholds
\$45,000	For transactions valued in excess of \$90.0 million but less than \$180.0 million
\$125,000	For transactions valued at or above \$180.0 million but less than \$899.8 million
\$280,000	For transactions valued at or above \$899.8 million

- **Revised Thresholds.** The complete list of revised thresholds are as follows:

Original Threshold	2018 Threshold	2019 Thresholds
\$10 Million	\$16.9 Million	\$18.0 Million
\$50 Million	\$84.4 Million	\$90.0 Million
\$100 Million	\$168.8 Million	\$180.0 Million
\$110 Million	\$185.7 Million	\$198.0 Million
\$200 Million	\$337.6 Million	\$359.9 Million
\$500 Million	\$843.9 Million	\$899.8 Million
\$1 Billion	\$1.688 Billion	\$1.799 Billion

The rules governing whether an HSR filing is required are complex, and the penalties for failing to comply are serious: as noted above, parties can face fines of up to \$42,530 per day. We would be pleased to assist with your analysis and any required filing.

If you have any questions, please contact one of the lawyers below.