

2018 Annual HSR Threshold Adjustments Announced

January 29, 2018

The Federal Trade Commission announced annual revisions to the Hart-Scott-Rodino Act jurisdictional thresholds on January 26, 2018, increasing all thresholds approximately 4.5% based on the change in gross national product. The most critical threshold, which often impacts whether a filing is required, increases the size-of-transaction threshold from \$80.8 million to \$84.4 million.

The HSR Act requires that parties to mergers and acquisitions, including acquisitions of voting securities and assets, file notifications with the FTC and Department of Justice and observe a statutory waiting period if the acquisition meets specified size-of-person and size-of-transaction thresholds and does not fall within an exemption to the HSR Act.

In addition to increases to the jurisdictional thresholds, the FTC also updated the filing fee tiers and certain exemption thresholds. These new HSR thresholds will go into effect 30 days after they are published in the Federal Register, which is expected to happen within a few days.

Among the most significant adjustments are the following:

- As noted above, the minimum size-of-transaction threshold will increase to \$84.4 million;
- The size-of-person test will increase from \$161.5 million to \$168.8 million and from \$16.2 million to \$16.9 million, with respect to the required level of annual net sales or total assets;
- The larger size-of-transaction threshold, which is applicable even if the size-of-person test is not met, will increase from \$323 million to \$337.6 million. This means that acquisitions of more than \$337.6 million will be reportable regardless of whether the size-of-person threshold is met (unless an exemption applies).
- The filing fee levels will be adjusted as follows:
 - A \$45,000 filing fee will be required for transactions valued in excess of \$84.4 million but below \$168.8 million;
 - A \$125,000 filing fee will be required for transactions valued from \$168.8 million but below \$843.9 million; and
 - A \$280,000 filing fee will be required for transactions valued at or above \$843.9 million.

The FTC also announced the revised dollar thresholds applicable to the size criteria applied under Section 8 of the Clayton Act, governing the legality of interlocking directorates. Competitor corporations are covered by Section 8 if each one has capital, surplus and undivided profits aggregating more than \$10 million (as adjusted), with the exception that no corporation is covered if the competitive sales of either corporation is less than \$1 million (as adjusted). The revised levels for these thresholds, to take effect immediately upon publication in the Federal Register, are \$34,395,000 and \$3,439,500.

Also, effective upon publication in the Federal Register is an inflation adjustment on the daily penalty for HSR violations, which is increasing to \$41,484 per day.

HSR filing analyses, and determinations of which interlocking directorates may violate Section 8 of the Clayton Act, are highly technical. If you have any questions, please reach out to a member of your Cooley corporate team or to any of the antitrust contacts listed.

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