

FTC Announces 2019 Revised Jurisdictional Thresholds for Hart-Scott-Rodino Act Filings

FEBRUARY 19, 2019

The Federal Trade Commission (FTC) recently announced the annual changes to the jurisdictional thresholds for Section 7A of the Clayton Act. These changes affect the notification thresholds for Hart-Scott-Rodino Act (HSR Act) premerger notifications and will be effective 30 days from their publication in the Federal Register, which is expected shortly. The annual change was delayed this year due to the recent federal government shutdown.

The HSR Act requires all persons or entities contemplating certain mergers or acquisitions that meet or exceed the jurisdictional thresholds of the Act to file notifications of that transaction with the FTC and the Department of Justice. Once both parties have submitted their HSR filings, the enforcement agencies have up to 30 days to decide whether to seek additional information – a process commonly known as a “Second Request.” The parties also have the option to request “Early Termination,” which, if granted, will shorten the 30-day waiting period to approximately two weeks. If the 30-day waiting period expires without the issuance of a Second Request, or if Early Termination is granted, the parties are free to close the transaction. If a Second Request is issued, the government has 30 days from the date the parties comply with the request to decide whether to let the transaction proceed or attempt to block it in court.

The HSR Act thresholds are adjusted annually, based on changes to the gross national product. The “size of transaction” threshold has been increased from \$84.4 million to \$90 million. With very limited exceptions, any transactions valued below \$90 million need not be reported. For transactions between \$90 million and \$359.9 million (up from \$337.6 million), the “size of person” test further determines whether a filing need be made. For an HSR filing to be required in this range, one party must have annual net sales or total assets of at least \$180 million (up from \$168.8 million) and the other party must have annual net sales or total assets of at least \$18 million (up from \$16.9 million). If a transaction is valued above \$359.9 million, the “size of person” test is not applicable.

Set forth below is a table displaying the original dollar amount thresholds of the HSR Act and new 2019 thresholds, which will become effective April 3, 2019.

2019 Jurisdictional Thresholds

ORIGINAL THRESHOLD ¹	2019 THRESHOLD
\$10 million 7A(a)(2)(B)(ii)(I) 7A(a)(2)(B)(ii)(III)	\$18 million
\$50 million 7A(a)(2)(B)(i) § 801.1(h)	\$90 million
\$100 million 7A(a)(2)(B)(ii)(I) 7A(a)(2)(B)(ii)(II) 7A(a)(2)(B)(ii)(III) § 801.1(h)	\$180 million
\$500 million § 801.1(h)	\$899.8 million
\$1 billion § 801.1(h)	\$1,799.5 million

The filing fee amounts the parties must pay has not changed, although they are tied to the new thresholds:

2019 Filing Fee Thresholds

FILING FEE	GREATER THAN	LESS THAN
\$45,000	\$90.0 million	\$180.0 million
\$125,000	\$180.0 million	\$899.8 million
\$280,000	\$899.8 million	

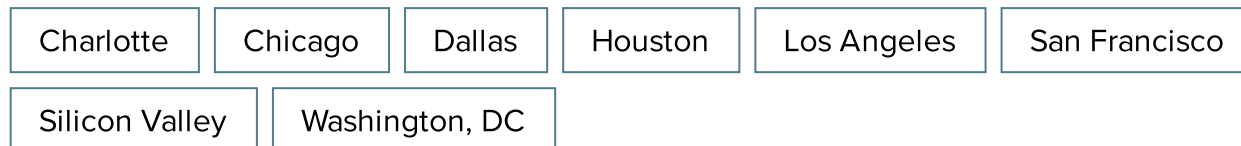
Failure to file an HSR Notification and Report Form is subject to a statutory penalty of up to \$40,000 per day for noncompliance. The HSR thresholds are only one part of the analysis to determine whether an HSR filing is

required. Please contact one of the authors with any questions regarding the reportability of a transaction. Winston lawyers regularly advise parties regarding the reportability of transactions, as well as guide clients through the reporting process and any government investigation that may follow.

¹ These are the thresholds that appear in the statute. The statute contains the language “as adjusted” after these thresholds to indicate the yearly adjustment based on GDP.

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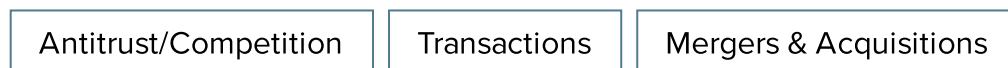
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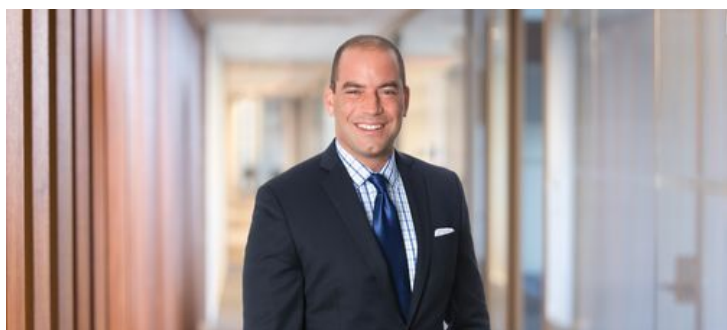
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