

FTC Announces 2018 Revised Jurisdictional Thresholds for Hart-Scott-Rodino Act Filings

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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 apply to all transactions that close on or after February 28, 2018.

As a brief background, 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 those transactions with the FTC and the Department of Justice. Once both parties have filed their HSR forms, 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 shifted from \$80.8 million to \$84.4 million. With very limited exceptions, any transactions valued below \$84.4 million need not be reported. For transactions between \$84.4 million and \$337.6 million (up from \$323 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 \$168.8 million (up from \$161.5 million) and the other party must have annual net sales or total assets of at least \$16.9 million (up from \$16.2 million). If a transaction is valued above \$337.6 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 2018 thresholds, which will apply to all transactions that close on or after February 28, 2018.

2018 Jurisdictional Thresholds

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ORIGINAL THRESHOLD ¹	2018 THRESHOLD
\$10 million 7A(a)(2)(B)(ii)(i) 7A(a)(2)(B)(ii)(III)	\$16.9 million
\$50 million 7A(a)(2)(B)(i) § 801.1(h)	\$84.4 million
\$100 million 7A(a)(2)(B)(ii)(i) 7A(a)(2)(B)(ii)(II) 7A(a)(2)(B)(ii)(III) § 801.1(h)	\$168.8 million
\$500 million §801.1(h)	\$843.9 million
\$1 billion §801.1(h)	\$1,687.8 million

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

FILING FEE	GREATER THAN	LESS THAN
\$45,000	\$84.4 million	\$168.8 million
\$125,000	\$168.8 million	\$843.9 million
\$280,000	\$843.9 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 will be required; please contact Winston with any questions regarding the HSR Act.

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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