

FTC Announces Annual Changes to HSR Thresholds (2019)

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On February 15, 2019, the Federal Trade Commission (FTC) announced the annual changes to the Hart-Scott-Rodino (HSR) Act notification thresholds.

The FTC is required by law to revise the jurisdictional thresholds annually, based on the change in gross national product. Accordingly, the 2019 Hart-Scott-Rodino reporting thresholds will increase by approximately 6.6% over 2018. These changes are expected to be published in the Federal Register the week of February 18, 2019, and will become effective 30 days after publication. The application of these HSR filing thresholds, particularly to cross-border transactions, is not straightforward and requires a thorough understanding of the statute and the voluminous and complex implementing regulations.

The HSR size-of-transaction threshold will increase to US\$90 million from US\$84.4 million. Transactions in which the acquirer will hold voting securities, non-corporate interests or assets valued above that amount (as calculated under the Act) may be reportable if the size-of-parties test is also satisfied and no exemptions are available.

The HSR size-of-parties threshold will also increase. It generally will require that one party have sales or assets of at least US\$180 million and the other party have sales or assets of at least US\$18 million. (Currently these thresholds are US\$168.8 million and US\$16.9 million, respectively.) Transactions valued at more than US\$359.9 million will be subject to pre-merger notification without regard to the sales or assets of the parties. (Currently, this threshold is US\$337.6 million.)

Certain dollar thresholds relevant to HSR exemptions, including those for acquisitions of non-US assets and voting securities, will also increase. The notification thresholds (which determine the filing fee payable) have increased as well, although the filing fees have not changed.

To summarize, the new HSR thresholds are as follows:

Size-of-transaction threshold:

US\$84.4 million will become *US\$90 million*

Size-of-parties thresholds:

US\$16.9 million will become *US\$18 million*

US\$168.8 million will become *US\$180 million*

Size-of-parties valuation "cap":

US\$337.6 million will become *US\$359.9 million*

Notification thresholds:

US\$84.4 million will become *US\$90 million*
US\$168.8 million will become *US\$180 million*
US\$843.9 million will become *US\$899.8 million*

Civil Penalty:

On February 14, 2019, the FTC separately announced that the maximum civil penalty amount for violations of the HSR Act will increase from US\$41,484 to US\$42,530 per day, effective upon publication in the Federal Register. The new penalty levels apply to civil penalties assessed after the effective date of the adjustment, including civil penalties whose associated violation predated the effective date.

Filing fees:

No changes

Noncompliance with the HSR act will carry serious penalties; parties should consult with their counsel before acting.

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