Annual HSR Threshold Adjustments Announced

FTC adjusts the Hart-Scott-Rodino Act thresholds, raising the minimum size for reportable acquisitions to US$90 million.

On February 15, 2019, the Federal Trade Commission (FTC) announced new jurisdictional thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). The FTC is required to adjust the thresholds annually, based on the change in gross national product. These increases will take effect in mid-March (30 days after the date of publication in the Federal Register), and will affect all transactions closing on or after the effective date.

The new thresholds will:

1. Increase the minimum size-of-transaction test to US$90 million; this means acquisitions valued at US$90 million or less will not be reportable
2. Increase the transaction size to which the size-of-person test applies to US$359.9 million; this means acquisitions of more than US$359.9 million will be reportable regardless of the size of the parties unless an exemption applies
3. Increase the size-of-person test to US$18 million and US$180 million; this means that acquisitions of $359.9 million or less are not reportable unless one person has assets or annual net sales of US$18 million or more and the other person has assets or annual net sales of US$180 million or more. The size-of-person test for an acquired person not engaged in manufacturing is sales of $180 million or assets of US$18 million.

The new thresholds for 2019 are set out below. The chart on the next page illustrates the application of the HSR thresholds and lists the filing fee amounts, which remain unchanged.

<table>
<thead>
<tr>
<th>Original Threshold</th>
<th>New Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size of Transaction</td>
<td></td>
</tr>
<tr>
<td>US$50 million</td>
<td>US$90 million</td>
</tr>
<tr>
<td>Size of Person</td>
<td></td>
</tr>
<tr>
<td>US$10 million and US$100 million</td>
<td>US$18 million and US$180 million</td>
</tr>
<tr>
<td>Transaction Size Above Which Size-of-Person Test Is Inapplicable</td>
<td>US$359.9 million</td>
</tr>
<tr>
<td>US$200 million</td>
<td></td>
</tr>
<tr>
<td>Notification Thresholds:</td>
<td></td>
</tr>
<tr>
<td>US$50 million</td>
<td>US$90 million</td>
</tr>
<tr>
<td>US$100 million</td>
<td>US$180 million</td>
</tr>
<tr>
<td>US$500 million</td>
<td>US$899.8 million</td>
</tr>
<tr>
<td>25% of stock worth US$1 billion</td>
<td>US$1,799.5 million</td>
</tr>
<tr>
<td>Filing fee thresholds:</td>
<td></td>
</tr>
<tr>
<td>$50 million</td>
<td>US$90 million</td>
</tr>
<tr>
<td>$100 million</td>
<td>US$180 million</td>
</tr>
<tr>
<td>$500 million</td>
<td>US$899.8 million</td>
</tr>
</tbody>
</table>
HSR Reportability Thresholds
§7A(a)(2)

**Size-of-Transaction Test**
Value of equity or assets held as a result of the acquisition (must aggregate with current holdings)

- **Small**
  - \( \leq \$90 \text{ m} \)

- **Medium**
  - \( > \$90 \text{ m} \)
  - \( \leq \$359.9 \text{ m} \)

- **Large**
  - \( > \$359.9 \text{ m} \)

**Size-of-Person Test**
Annual net sales and total assets

- One person’s assets/sales are \( \geq \$180 \text{ m} \)
- One person’s assets/sales are \( \geq \$18 \text{ m} \)

No filing required if:
(i) *acquired* person is not engaged in manufacturing; and
(ii) has assets of less than \$18 m; and
(iii) has net sales of less than \$180 m, §7A(a)(2)(B)(ii)(II, III)

Filing required, unless an exemption applies

<table>
<thead>
<tr>
<th>Size of Transaction</th>
<th>Filing Fee (acquiring person only)</th>
</tr>
</thead>
<tbody>
<tr>
<td>( &lt; $180 \text{ m} )</td>
<td>$45,000</td>
</tr>
<tr>
<td>( &lt; $899.8 \text{ m} )</td>
<td>$125,000</td>
</tr>
<tr>
<td>( \geq $899.8 \text{ m} )</td>
<td>$280,000</td>
</tr>
</tbody>
</table>

Some common exemptions:
- Ordinary course of business acquisitions, 802.1, §7A(c)(1)
- Certain acquisitions of real property, 802.2, 802.5
- Acquisitions solely for investment purposes, 802.9, 802.64
- Intraperson transfers, restructuring, 802.30
- Foreign assets, if US sales below threshold, 802.50
- Voting securities of foreign issuer without US nexus, 802.51
- Acquisitions subject to US agency approval, 802.6
- Acquisitions by or from a foreign government 802.52

Sources: HSR Act (§7A Clayton Act,15 USC §18a), Coverage Rules and Exemption Rules (16 CFR Parts 801 and 802)
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