Annual HSR Threshold Adjustments Announced

FTC adjusts the Hart-Scott-Rodino Act size thresholds, inter alia, to raise the minimum size for reportable acquisitions to $80.8 million.

On January 19, 2017, the Federal Trade Commission 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 30 days after the date of publication in the Federal Register. The new thresholds should be effective in late February 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 $80.8 million; this means acquisitions of $80.8 million or less will not be reportable;
2. Increase the transaction size to which the size-of-person test applies to $323 million; this means acquisitions of more than $323 million will be reportable regardless of the size of person unless an exemption applies and;
3. Increase the size-of-persons test to $16.2 million and $161.5 million; this means that acquisitions of $323 million or less are not reportable unless one person has assets or annual net sales of $16.2 million or more and the other person has assets or annual net sales of $161.5 million or more. If the acquired person is not engaged in manufacturing, the test for it is sales of $161.5 million or assets of $16.2 million.

The new thresholds for 2017 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>$50 million</td>
<td>$80.8 million</td>
</tr>
<tr>
<td>Size-of-Persons</td>
<td></td>
</tr>
<tr>
<td>$10 million and $100 million</td>
<td>$16.2 million and $161.5 million</td>
</tr>
<tr>
<td>Transaction Size above which Size-of-Persons Test Inapplicable</td>
<td>$323 million</td>
</tr>
<tr>
<td>$200 million</td>
<td></td>
</tr>
<tr>
<td>Notification thresholds:</td>
<td></td>
</tr>
<tr>
<td>$50 million</td>
<td>$80.8 million</td>
</tr>
<tr>
<td>$100 million</td>
<td>$161.5 million</td>
</tr>
<tr>
<td>$500 million</td>
<td>$807.5 million</td>
</tr>
<tr>
<td>25% of stock worth $1 billion</td>
<td>$1,615 million</td>
</tr>
<tr>
<td>Filing fee thresholds:</td>
<td></td>
</tr>
<tr>
<td>$50 million</td>
<td>$80.8 million</td>
</tr>
<tr>
<td>$100 million</td>
<td>$161.5 million</td>
</tr>
<tr>
<td>$500 million</td>
<td>$807.5 million</td>
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</table>

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HSR Reportability Thresholds
§7A(a)(2)

2017 Adjusted Thresholds

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

- **Small**
  - ≤ $80.8 m

- **Medium**
  - > $80.8 m
  - ≤ $323 m

- **Large**
  - > $323 m

Size of Person Test
Annual net sales and total assets

- One person’s assets/sales are ≥
  - $161.5 m

  **No filing required if**
  - (i) acquired person is not engaged in manufacturing; and
  - (ii) has assets of less than $16.2 m; and
  - (iii) has net sales of less than $161.5 m, §7A(a)(2)(B)(ii)(II, III)

- One person’s assets/sales are ≥
  - $16.2 m

  **No filing required**

- **Yes**
  - Filing required, unless an exemption applies

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

<table>
<thead>
<tr>
<th>Size of Transaction</th>
<th>Filing Fee (acquiring person only)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; $161.5 m</td>
<td>$45,000</td>
</tr>
<tr>
<td>&lt; $807.5 m</td>
<td>$125,000</td>
</tr>
<tr>
<td>≥ $807.5 m</td>
<td>$280,000</td>
</tr>
</tbody>
</table>

Sources: HSR Act (§7A Clayton Act, 15 USC §18a), Coverage Rules and Exemption Rules (16 CFR Parts 801 and 802)
If you have any questions about this Client Alert, please contact one of the attorneys listed below:

**Washington, D.C.**

- **Jason D. Cruise**  
  jason.cruise@lw.com  
  +1.202.637.1033

- **Michael G. Egge**  
  michael.egge@lw.com  
  +1.202.637.2285

- **Abbott (Tad) B. Lipsky**  
  tad.lipsky@lw.com  
  +1.202.637.2283

- **Amanda P. Reeves**  
  amanda.reeves@lw.com  
  +1.202.637.2183

- **E. Marcellus Williamson**  
  marc.williamson@lw.com  
  +1.202.637.2200

- **Farrell J. Malone**  
  farrell.malone@lw.com  
  +1.202.637.1024

- **Sydney M. Smith**  
  sydney.smith@lw.com  
  +1.202.637.2316

- **Peter M. Todaro**  
  peter.todaro@lw.com  
  +1.202.637.2380

- **Patrick C. English**  
  patrick.english@lw.com  
  +1.202.637.1030

**San Francisco**

- **Joshua N. Holian**  
  joshua.holian@lw.com  
  +1.415.646.8343

- **Hanno F. Kaiser**  
  hanno.kaiser@lw.com  
  +1.415.395.8856

- **Karen E. Silverman**  
  karen.silverman@lw.com  
  +1.415.395.8232

**Brussels**

- **Howard Rosenblatt**  
  howard.rosenblatt@lw.com  
  +32.2.788.6219

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