Annual HSR Threshold Adjustments Announced

FTC adjusts the Hart-Scott-Rodino Act size thresholds, raising the minimum size for reportable acquisitions to $94 million.

On January 28, 2020, 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 were published in the Federal Register and are effective for all transactions closing on or after February 27, 2020.

The new thresholds will:

- Increase the minimum size-of-transaction test to $94 million; this means acquisitions of $94 million or less will not be reportable
- Increase the transaction size to which the size-of-persons test applies to $376 million; this means acquisitions of more than $376 million will be reportable regardless of the size of the parties unless an exemption applies
- Increase the size-of-persons test to $18.8 million and $188 million; this means that acquisitions of $376 million or less are not reportable unless one person has assets or annual net sales of $18.8 million or more and the other person has assets or annual net sales of $188 million or more. The size-of-person test for an acquired person that is not engaged in manufacturing is sales of $188 million or assets of $18.8 million.

The new thresholds for 2020 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>$94 million</td>
</tr>
<tr>
<td>$50 million</td>
<td>$94 million</td>
</tr>
<tr>
<td>$10 million and $100 million</td>
<td>$18.8 million and $188 million</td>
</tr>
<tr>
<td>Transaction Size above which Size-of-Persons Test Inapplicable</td>
<td>$376 million</td>
</tr>
<tr>
<td>$200 million</td>
<td>$376 million</td>
</tr>
<tr>
<td>Notification thresholds:</td>
<td>$94 million</td>
</tr>
<tr>
<td>$50 million</td>
<td>$94 million</td>
</tr>
<tr>
<td>$100 million</td>
<td>$188 million</td>
</tr>
<tr>
<td>$500 million</td>
<td>$940.1 million</td>
</tr>
<tr>
<td>25% of stock worth $1 billion</td>
<td>$1,880.2 million</td>
</tr>
<tr>
<td>Filing fee thresholds:</td>
<td>$94 million</td>
</tr>
<tr>
<td>$50 million</td>
<td>$94 million</td>
</tr>
<tr>
<td>$100 million</td>
<td>$188 million</td>
</tr>
<tr>
<td>$500 million</td>
<td>$940.1 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 (aggregate with current holdings)

- **Small**
  - ≤ $94 m

- **Medium**
  - > $94 m
  - ≤ $376 m

- **Large**
  - > $376 m

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

- One person’s assets/sales are ≥ $188 m
  - No filing required

- One person’s assets/sales are ≥ $18.8 m
  - No filing required if
    - (i) acquired person is not engaged in manufacturing; and
    - (ii) has assets of less than $18.8 m; and
    - (iii) has net sales of less than $188 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; $188 m</td>
<td>$45,000</td>
</tr>
<tr>
<td>&lt; $940.1 m</td>
<td>$125,000</td>
</tr>
<tr>
<td>≥ $940.1 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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