

Client Alert

March 2019

Alert: New HSR Thresholds

On March 4, the FTC published the revised Hart-Scott-Rodino (“HSR”) thresholds in the Federal Register. Retail (or other) companies contemplating mergers or acquisitions need to be aware of the new thresholds. Companies may need to file with the Federal Trade Commission and Department of Justice if the value of the deal exceeds \$90 million. The revised thresholds will apply to all transactions closed on or after April 3, 2019.

ORIGINAL THRESHOLD	2018 THRESHOLD	2019 THRESHOLD
\$10 million	\$16.9 million	\$18 million
\$50 million	\$84.4 million	\$90 million
\$100 million	\$168.8 million	\$180 million
\$110 million	\$185.7 million	\$198 million
\$200 million	\$337.6 million	\$359.9 million
\$500 million	\$843.9 million	\$899.8 million
\$1 billion	\$1,687.8 million	\$1,799.5 million

The FTC revises the HSR thresholds each year, based on gross national product. Under the revised thresholds, generally, if the value of non-corporate interests, assets, voting securities or a combination thereof exceeds \$359.9 million and no exemption applies, the parties must file. If the value of the transaction exceeds \$90 million but is \$359.9 million or less, then antitrust counsel will need to do a “size of person” analysis. Generally, an HSR filing will not be required unless one party to the transaction has total assets or annual net sales of \$18 million or more and the other party has total assets or annual net sales of \$180 million or more.

The filing fees are as follows:

FEE	VALUE OF TRANSACTION
\$45,000	> \$90 million but < \$180 million
\$125,000	\$180 million or greater but < \$899.8 million
\$280,000	\$899.8 million or greater

HSR analysis is fact-specific and requires a comprehensive and thorough understanding of both the statute and relevant regulations. Clients are advised to consult with antitrust counsel as early as possible to determine if an HSR filing is needed before closing the deal. Noncompliance is costly. The maximum civil penalty for violating the HSR Act increased, from \$41,484 to \$42,530 per day, on February 14, 2019.

Contact

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