

2017 Increases to HSR Act Thresholds

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On January 19, 2017, the Federal Trade Commission (“FTC”) announced the annual changes to the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (the “HSR Act”) pre-merger notification thresholds (see attached release). These changes will become effective sometime in late February, 30 days after notice is published in the Federal Register. However, please note that if a transaction is entered into prior to the February effective date, the new thresholds will still apply to the transaction as long as it closes on or after the effective date of the new thresholds.

As a brief background summary, under the HSR Act, the FTC and Department of Justice must be notified before mergers, acquisitions and other transactions that meet certain monetary thresholds are consummated. Once the parties have filed their HSR Act Notification and Report Forms, the enforcement agencies have up to 30 days to decide whether to seek additional information—a process commonly known as a “second request.” The parties also have the option to request “Early Termination” which, if granted, will shorten the 30-day waiting period to approximately two weeks. If the 30-day waiting period expires without the issuance of a second request, or if Early Termination is granted, the parties are free to close the transaction immediately. If a second request is issued, the government has 30 days from the date the parties comply with the request to decide whether to let the transaction proceed or attempt to block it in court. Failure to file an HSR Act Notification and Report Form is subject to a statutory penalty of up to \$16,000 per day for noncompliance.

The new thresholds will increase the minimum value of a transaction that could trigger an HSR Act filing as follows:

Size of Transaction

Transaction Value	HSR Act Filing Required?
• \$80.8 million or less (from 2016 threshold of \$78.2 million)	No
• More than \$80.8 million up to \$323 million (from 2016 threshold of \$312.6 million)	Only if size-of-person test is met (see below)
• More than \$323 million	Yes

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Size of Person

Total assets or annual net sales of	2016 Threshold	Adjusted 2017 Threshold
• Acquiring/acquired person	\$156.3 million	\$161.5 million
• Other person	\$15.6 million	\$16.2 million

Filing Fee

Although the filing fee itself has not changed, the new filing-fee thresholds will also take effect on the effective date and will apply to transactions filing an HSR Act Notification and Report Form on or after the effective date. For transactions that have been signed but have not closed yet, the applicable filing-fee thresholds are those in effect at the time of filing the HSR Act Notification and Report Form.

Transaction Value	Filing Fee
• More than \$80.8 million but less than \$161.5 million	\$45,000
• \$161.5 million but less than \$807.5 million	\$125,000
• \$807.5 million or more	\$280,000

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