

FTC Announces Increased Hart-Scott-Rodino and Clayton Act Section 8 Thresholds for 2019

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Practices: Commercial, Competition & Trade, Corporate, Finance & Acquisitions

Executive Summary

The Federal Trade Commission (FTC) has announced its 2019 jurisdictional and filing fee thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). The thresholds, adjusted annually, determine whether parties involved in proposed mergers, consolidations or other acquisitions of voting securities, assets or unincorporated interests must notify the FTC and the Antitrust Division of the Department of Justice (DOJ) of a proposed transaction and comply with a mandatory waiting period before the transaction can be consummated. The new thresholds will go into effect 30 days after they are published in the Federal Register, which is expected any day. The FTC also has announced an increase in the maximum civil penalty for non-compliance with the HSR Act, as well as revised thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act.

A very *brief summary* of the changes is as follows:

- The Size of Transaction Threshold under the HSR Act has increased to **\$90 million** (up from \$84.4 million).
- Acquisitions that do not exceed **\$359.9 million** in value (up from \$337.6 million) must also meet the Size of Person Threshold to require notification to the FTC and DOJ under the HSR Act. This threshold requires that one of the parties to the transaction has total assets or annual net sales of **\$180 million** (up from \$168.8 million) or more and the other party has total assets or annual net sales of **\$18 million** (up from \$16.9 million) or more.
- HSR Act Filing Fee Thresholds have been revised as follows:

| <u>Transactions Valued at:</u> | <u>Filing Fee:</u> |
|---|--------------------|
| more than \$90 million (up from \$85.4 million) but less than \$180 million (up | \$45,000 |

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|---|------------------|
| from \$168.8 million) | |
| \$180 million or more but less than \$899.8 million (up from \$843.9 million) | \$125,000 |
| \$899.8 million or more | \$280,000 |

- HSR Act filing thresholds for acquisitions that result in ownership of less than 50 percent of the outstanding voting securities of a corporation also have increased (based upon value and percentage of the issuer’s voting securities).
- Additionally, the FTC announced an increase in the Maximum Civil Penalty for noncompliance with the HSR Act of **\$42,530 per day** (up from \$41,484 per day).
- The FTC also has revised the thresholds for prohibited interlocking directorates under Section 8 of the Clayton Act. Section 8 generally prohibits companies that compete with each other from having interlocking memberships on their corporate boards.
 - Section 8(a)(1) prohibits a person from serving as a director or board-elected or board-appointed officer of two or more corporations if the combined capital, surplus, and undivided profits of each of the corporations exceeds **\$36,564,000** (up from \$34,395,000).
 - Section 8(a)(2)(A) of the Clayton Act exempts interlocks for which the competitive sales of either corporation are less than **\$3,656,400** (up from \$3,439,500).

The above is only a general summary. A multitude of exceptions may apply. Please contact us if you have questions or desire additional details.