

January 29, 2018

## FTC Announces Increased HSR Thresholds

The Federal Trade Commission has announced revised jurisdictional and filing fee thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“the Act”), as amended. The new thresholds under the Act represent an approximately 4% increase from last year, when the thresholds were increased over 2016 thresholds based on changes in the gross national product.

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Transactions closing on or after **February 28, 2018** will be subject to the following revised thresholds:

- **Size-of-Transaction Test:** The \$50 million (as adjusted) threshold used in the size-of-transaction test will increase from \$80.8 million to **\$84.4 million**.
- **Size-of-Persons Test:** The \$10 million (as adjusted) and \$100 million (as adjusted) sales and assets thresholds used in the size-of-persons test will increase from \$16.2 million to **\$16.9 million** and from \$161.5 million to **\$168.8 million**, respectively. The \$200 million (as adjusted) threshold, below which the size-of-persons test applies, will increase from \$323 million to **\$337.6 million**.
- **Filing Fees:** The filing fees under the Act are not revised under these changes, but the filing thresholds based upon the value of assets or voting securities which trigger each fee will be revised as follows:

Value of Transaction	Filing Fee
<b>In excess of \$84.4 million but less than \$168.8 million</b> (previously \$80.8 million but less than \$161.5 million)	<b>\$45,000</b>
<b>\$168.8 million or greater but less than \$843.9 million</b> (previously \$161.5 million but less than \$807.5 million)	<b>\$125,000</b>
<b>\$843.9 million or more</b> (previously \$807.5 million or more)	<b>\$280,000</b>

Other value limitations contained in the HSR coverage and exemption rules have also been adjusted. The FTC has also increased the civil penalties for noncompliance with the HSR Act to \$41,484 (previously \$40,654) for each day during which a person is in violation of the Act.

The revised jurisdictional thresholds will remain in effect until the next adjustment issued by the FTC, which is expected in the first quarter of 2019.

## FTC Announces Revised Thresholds for Interlocking Directorates

The Federal Trade Commission has announced revised thresholds for interlocking directorates required under Section 8 of the Clayton Act (15 U.S.C. § 19(a)(5)). The revised thresholds are effective as of January 29, 2018.

As revised, with certain exceptions, Section 8 prohibits a person from serving as a director or officer of two competing corporations (other than banks, banking associations, and trust companies) if each corporation has capital, surplus and undivided profits in excess of **\$34,395,000** (increased from \$32,914,000) and the competitive sales of both corporations equal or exceed **\$3,439,500** (increased from \$3,291,400). Note that a person shall not be prohibited from simultaneous service if the competitive sales of either corporation are less than 2 percent of its total sales or the competitive sales of each corporation are less than 4 percent of its total sales.

“Competitive sales” are defined as the gross revenues for all products and services sold by one corporation in competition with the other during its most recent fiscal year. “Total sales” are defined as gross revenues for all products and services sold by one corporation in the corporation's most recent fiscal year.

The question of whether any of these safe harbors apply in a given situation may be complex. If you have any questions regarding these changes, please feel free to contact a member of the [Antitrust Practice Group](#).