

UPDATE: FTC Revises Hart-Scott-Rodino Thresholds; Minimum Size for Reportable Transactions Increases to \$90 Million (Effective April 3, 2019)

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Antitrust Alert

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Key Points

- Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires parties to transactions meeting certain size and other tests to file premerger notification forms with both the Federal Trade Commission and Department of Justice Antitrust Division.
- The minimum transaction size test has increased from \$84.4 million to \$90 million. The new size thresholds will apply to transactions consummated on or after the effective date, April 3, 2019.¹
- Parties contemplating M&A activity are strongly encouraged to consult antitrust counsel to determine whether premerger notification is required.

On February 15, 2019, the Federal Trade Commission (FTC) announced the latest annual revision to the size thresholds governing premerger notification requirements under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, Section 7A of the Clayton Act, 15 U.S.C. § 18a (the “HSR Act”).² The HSR Act requires parties to transactions meeting certain size and other tests to file premerger notification forms with both the FTC and the Department of Justice Antitrust Division and observe a mandatory waiting period prior to closing. The new thresholds will apply to transactions consummated on or after the effective date of April 3, 2019, which is 30 days following publication of formal notice in the Federal Register.³

The Size-of-Transaction Threshold

The minimum transaction size test has increased from \$84.4 million to \$90 million (an approximate 6.6 percent increase). Thus, under the revised thresholds, HSR Act filings will be required (unless otherwise exempted) for a transaction that results in the acquiring person holding more than \$90 million of the acquired person’s voting securities, noncorporate interests, or assets.

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2019 Adjusted Size of Transaction Thresholds
> \$90 million but < \$180 million
≥ \$180 million but < \$899.8 million
≥ \$899.8 million
25% (if valued > \$1,799.5 million)
50% (if valued > \$90 million)

The Size-of-Person Threshold

The size-of-person thresholds have increased by a similar percentage amount. While the HSR Act size-of-person rules are complex, under the new thresholds no HSR Act filing will generally be required for transactions valued at more than \$90 million but less than \$359.9 million, unless one party to the transaction has \$180 million in annual net sales or total assets and the other party has \$18 million in annual net sales or total assets. Any transaction that is valued at more than \$359.9 million will be reportable under the HSR Act (unless otherwise exempted) without application of the size-of-person test. The potential exemption afforded by the size-of-person test will be inapplicable to transactions valued at more than \$359.9 million.

HSR Act Filing Fee Thresholds

The FTC has also adjusted the tiered filing fee structure as follows:

Value of Transaction (\$ millions)	Filing Fee
More than \$90 but less than \$180	\$45,000
\$180 to less than \$899.8	\$125,000
\$899.8 or more	\$280,000

Parties contemplating merger or acquisition activity are strongly encouraged to consult antitrust counsel to determine whether premerger notification is required. The rules governing the calculation of the relevant filing thresholds and the applicability of particular exemptions to all or part of a transaction are very complex.

Persons who fail to file and observe the waiting period when required to do so face civil penalties of up to \$42,530 per day.⁴⁴

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¹ The revised thresholds were published in the Federal Register on March 4, 2019 ([click here](#)) and the effective date is April 3, 2019.

² See [FTC Announces Annual Update of Size of Transaction Thresholds for Premerger Notification Filings and Interlocking Directorates](#), available [here](#).

³ In addition to the size thresholds highlighted in this alert, most other HSR thresholds (for example, relating to various exemptions) have increased as well. On February 15, 2019, the FTC also announced the annual revisions to the interlocking directorate thresholds under Section 8 of the Clayton Act. The new thresholds, effective March 4, 2019, are \$36,564,000 for Section 8(a)(1) and \$3,656,400 for Section 8(a)(2)(A).

⁴⁴ On February 13, 2019, the FTC announced the maximum daily civil penalty was adjusted for inflation to \$42,530, effective February 14, 2019. [Click here](#) for more detail.