

Antitrust & Trade Regulation

January 29, 2020

2020 HSR Thresholds Announced by Federal Trade Commission

By **Jack Sidorov, Jeffrey Blumenfeld, and Jeffrey M. Shapiro**

The Federal Trade Commission has announced new premerger notification thresholds that will take effect February 27 and thus apply to transactions closing on or after that date. Under the 2001 amendments to the Hart-Scott-Rodino (HSR) Act, 15 U.S.C. 18a, the act's jurisdictional thresholds are adjusted annually to reflect changes in nominal (non-inflation-adjusted) gross national product. The newly announced adjustments will increase the HSR Act thresholds by approximately 4.4 percent.

Adjustments to size-of-transaction thresholds

Transactions that are never reportable: The new minimum size-of-transaction threshold will be \$94 million, an increase of \$4 million from the current \$90 million threshold. Thus, a transaction that results in holdings of \$94 million or less will not require HSR notification.

Transactions that are always reportable: At the other end of the size spectrum, a transaction that results in holdings of more than \$376 million will trigger HSR notification and waiting requirements unless an exemption from filing applies.

Transactions that may be reportable: For transactions resulting in holdings falling between these two size-of-transaction thresholds (that is, greater than \$94 million but no greater than \$376 million), whether HSR applies depends on whether both parties meet the size-of-person thresholds. (Note that these thresholds apply to the size of the parties and not merely to the size of the acquiring entity and the acquired entity, so it is necessary to look to the ultimate parent entity of each and include all entities controlled by it.)

Adjustments to size-of-person thresholds

The adjusted size-of-person thresholds are \$18.8 million and \$188 million, meaning that acquisitions

resulting in holdings greater than \$94 million but no greater than \$376 million will not require HSR notification unless one person has total assets or annual net sales of \$18.8 million or more, and the other person, \$188 million or more. (Note that, additionally, if the acquired person is not engaged in manufacturing, it must have annual net sales of \$188 million or total assets of \$18.8 million.)

What else changes?

The HSR Rules (16 CFR parts 801-803) provide several exemptions that contain dollar value limitations described by the parenthetical "(as adjusted)." Those limitations (for example, the nexus with commerce limitations for the exemptions for acquisitions of foreign assets (16 CFR 802.50) and acquisitions of voting securities of a foreign issuer (16 CFR 802.51)) will be adjusted upward.

The HSR Rules also provide, for voting securities acquisitions, "notification thresholds" (see 16 CFR 801.1(h)) setting forth levels of holdings that would require another HSR notification. (Note, however, that once the 50 percent level is reached, no additional notification is required.) As the dollar values for these notification thresholds are set forth with the parenthetical "(as adjusted)," they will similarly be adjusted upward.

The 2001 amendments established a sliding scale for HSR filing fees, with fees of \$45,000, \$125,000, or \$280,000 based on the transaction value. While the filing fees themselves are not adjusted annually, the points at which the different fees apply are adjusted, so that the \$45,000 fee will apply to transactions valued in excess of \$94 million but less than \$188 million, the \$125,000 fee to transactions valued at \$188 million or greater but less than \$940.1 million, and the \$280,000 fee to transactions valued at \$940.1 million or greater.

HSR Thresholds

(in millions)

Base Threshold (HSR Act or Rules)	2019 Threshold	2020 Threshold (effective February 27, 2020)
\$10	\$18	\$18.8
\$50	\$90	\$94
\$100	\$180	\$188
\$110	\$198	\$206.8
\$200	\$359.9	\$376
\$500	\$899.8	\$940.1
\$1,000	\$1,799.5	\$1,880.2

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

JACK SIDOROV

Senior Counsel

T: 202.753.3799

jsidorov@lowenstein.com

JEFFREY BLUMENFELD

Partner

T: 202.753.3810

jblumenfeld@lowenstein.com

JEFFREY M. SHAPIRO

Partner

T: 973.597.2470

jshapiro@lowenstein.com

LEIV BLAD JR.

Partner

T: 202.753.3820

lblad@lowenstein.com

ZAREMA A. JARAMILLO

Partner

T: 202.753.3830

zjaramillo@lowenstein.com

MARITA A. MAKINEN

Partner

T: 212.419.5843

mmakinen@lowenstein.com

STEVEN E. SIESSER

Partner

T: 212.204.8688

ssiesser@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

This Alert has been prepared by Lowenstein Sandler LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. Lowenstein Sandler assumes no responsibility to update the Alert based upon events subsequent to the date of its publication, such as new legislation, regulations and judicial decisions. You should consult with counsel to determine applicable legal requirements in a specific fact situation. Attorney Advertising.