

Client Alert

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New HSR Filing Thresholds for 2016

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On January 21, 2016, the U.S. Federal Trade Commission (FTC), the agency charged with administering the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”), as amended, and its filing requirements, announced the adjusted HSR Act notification thresholds for 2016. The new thresholds will become effective February 25, 2016. The HSR Act notification requirements apply to transactions that satisfy the specified “size of transaction” and “size of person” thresholds, and the thresholds are adjusted annually to reflect changes in the U.S. gross national product. The key adjusted thresholds are summarized in the following chart:

Test	2015 Threshold	2016 Adjusted Threshold
Size of Transaction	\$76.3 million	\$78.2 million
Size of Party (lower)	\$15.3 million	\$15.6 million
Size of Party (higher)	\$152.5 million	\$156.3 million
Size of Transaction Where Size of Party Threshold Not Satisfied	\$305.1 million	\$312.6 million

The new thresholds also apply to certain other HSR Act thresholds and exemptions.

Under the new thresholds, the “size of transaction” threshold will increase from \$76.3 million to \$78.2 million. No HSR Act notification will be required if the value of voting securities and assets held as a result of the transaction is below this threshold.

The “size of parties” thresholds of \$15.3 million and \$152.5 million in either annual sales or total assets will increase to \$15.6 million and \$156.3 million, respectively. For transactions valued at more than \$78.2 million but not more than \$312.6 million, no HSR Act notification will be required if the ultimate parent entities of one or both parties to the transaction do not satisfy the applicable “size of parties” thresholds.

Transactions valued at more than \$312.6 million (previously \$305.1 million) will be reportable regardless of the size of the parties, unless an HSR Act exemption applies.

The new thresholds do not affect the HSR Act filing fees, but the applicable filing fee will be based on the new thresholds, as follows: \$45,000 for transactions valued at less than \$156.3 million; \$125,000 for transactions valued from \$156.3 million to \$781.5 million; and \$280,000 for transactions valued at \$781.5 million or more.

Client Alert

The new thresholds will remain in effect until the next annual adjustment, expected in the first quarter of 2017.

It is important to keep in mind that a transaction will not escape antitrust scrutiny simply because the HSR Act's filing thresholds are not satisfied. Indeed, close to 20 percent of the Antitrust Division's merger investigations in recent years involved non-reportable transactions, and more than 25 percent of these investigations resulted in a challenge. Similarly, approximately 20 percent of all FTC merger challenges in recent years have involved consummated transactions. Even small transactions with a purchase price below \$10 million have been challenged.

The FTC also announced the revised thresholds for Section 8 of the Clayton Act that prohibit, with certain exceptions, interlocking directorates where one person serves as a director or officer of two competing corporations, if two thresholds are met. Under the revised thresholds, effective when published in the Federal Register, Section 8 may apply when each of the competing corporations has capital, surplus, and undivided profits aggregating more than \$31,841,000 and each corporation's competitive sales are at least \$3,184,100.

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