

Increased HSR Thresholds Become Effective on April 3, 2019

On Feb. 15, 2019, the Federal Trade Commission announced the 2019 adjusted thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (**HSR Act**). The HSR Act notification requirements apply to transactions that satisfy the specified “size of transaction” and “size of person” dollar thresholds. These thresholds, however, change from year to year. The HSR Act requires an annual threshold adjustment based on changes in the U.S. gross national product for each fiscal year. The newly announced 2019 thresholds were officially published in the *Federal Register* on March 4, 2019, will become effective on April 3, 2019, and will be applicable until recalculated in early 2020.

The key HSR Act threshold adjustments are summarized in the following chart:

Test	2018 Threshold	2019 Adjusted Threshold
Size of Transaction	\$84.4 million	\$90.0 million
Size of Person (lower)	\$16.9 million	\$18.0 million
Size of Person (higher)	\$168.8 million	\$180.0 million
Size of Transaction Where Size of Person Threshold Is Not Satisfied	\$337.6 million	\$359.9 million

Subject to certain exemptions, the “size of transaction” threshold is determined based on the value of voting securities, non-corporate interests (e.g., membership interests of a limited liability company or interests in a partnership) and assets held as a result of the transaction. Under the new 2019 thresholds, there will be no HSR Act notification requirements for transactions valued at less than \$90.0 million.

Subject to certain exemptions, the “size of person” thresholds, on the other hand, will increase to \$18.0 million (in total assets or annual net sales) and \$180.0 million (in total assets or annual net sales), from \$16.9 million and \$168.8 million in 2018, respectively. If the ultimate parent entities of one or both parties to the transaction do not satisfy the applicable “size of person” thresholds, then there is no HSR Act notification required for transactions valued at more than \$90.0 million but not more than \$359.9 million. Conversely, transactions valued at more than \$359.9 million (increased from \$337.6 million in 2018) will be reportable in 2019 regardless of the size of the persons, unless an HSR Act exemption applies.

The underlying HSR Act filing fees remain unchanged, but the applicable filing fee will be based on the new thresholds, as follows:

March 7, 2019

Amount of the Filing Fee	Size of Transaction
\$45,000	Greater than \$90 million but less than \$180.0 million
\$125,000	\$180.0 million or greater but less than \$899.8 million
\$280,000	\$899.8 million or greater

Finally, the FTC also increased the maximum civil penalty for violations of the HSR Act to \$42,530 per day (from \$41,484 per day), effective on publication in the *Federal Register*.

As always, the value of a transaction is subject to certain exceptions and calculation adjustments that can affect either the obligation to make a notification filing or the amount of the filing fee required with the filing. If you have any questions regarding the matters covered in this publication, please contact [Gino Maurelli](#) or [Matthew Nyberg](#) or your regular [Brownstein Hyatt Farber Schreck](#) contact.

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