

HSR Size of Transaction Threshold to Increase to \$84.4 Million

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The Federal Trade Commission ("FTC") announced revised thresholds for merger notifications under the Hart-Scott-Rodino ("HSR") Act. Once effective, the lowest size-of-transaction filing threshold (also known as the "\$50 million threshold") will increase from the current \$80.8 million to \$84.4 million. The FTC is expected to publish a notice of the new thresholds in the Federal Register in the next few days, and the thresholds will become effective 30 days later (the "Effective Date"). Parties to transactions that close on or after the Effective Date are subject to the revised thresholds.

The "\$10 million" and "\$100 million" size-of-person thresholds will increase to \$16.9 million and \$168.8 million, respectively. The size-of-person test applies to transactions valued at less than \$200 million (as adjusted, \$337.6 million) and is based on the total assets and annual net sales of the ultimate parent entities (UPEs) of the acquiring and acquired persons. In general, to be reportable, the UPE of one party to the transaction must have annual net sales or total assets of \$10 million or more (as adjusted, \$16.9 million), and the UPE of the other party must have annual net sales or total assets of \$100 million or more (as adjusted, \$168.8 million). There are, however, several nuances and exceptions to the size-of-person test that must be examined separately for each transaction.

The increased thresholds arise from amendments to the HSR Act in 2000 that require the FTC to adjust the thresholds annually for change in the gross national product. All of the notification and exemption dollar thresholds in the HSR statute, regulations, and reporting instructions that are subject to annual adjustments will also be adjusted. The new HSR dollar thresholds will be as follows:

Original Threshold	2017 Threshold	2018 Threshold
\$10 million	\$16.2 million	\$16.9 million
\$50 million	\$80.8 million	\$84.4 million
\$100 million	\$161.5 million	\$168.8 million

\$110 million	\$177.7 million	\$185.7 million
\$200 million	\$323 million	\$337.6 million
\$500 million	\$807.5 million	\$843.9 million
\$1 billion	\$1.615 billion	\$1.6878 billion

The FTC has also announced that it will be adjusting both dollar thresholds for Section 8 of the Clayton Act to account for changes in the gross national product. Section 8, in many circumstances, forbids a person from serving as an officer or director 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 \$34,395,000 and each corporation's competitive sales (e.g., sales derived from product(s) for which the two companies compete) are at least \$3,439,500.

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