

U.S. Federal Trade Commission (FTC) Announces Annual Update to HSR and Interlocking Directorate Thresholds

HSR

The FTC recently announced annual updates to certain thresholds for reporting transactions pursuant to the Hart-Scott-Rodino Antitrust Improvements Act (HSR). The announcement of these adjustments was delayed due to the recent federal government shutdown. These new thresholds are effective for transactions consummated on or after April 3, 2019.

Under the HSR, parties to certain transactions, including asset acquisitions, stock acquisitions, joint ventures, and exclusive license arrangements, are required to file a premerger notification and report form (HSR Form) with the FTC and the U.S. Department of Justice if certain notification thresholds are met. With these recent adjustments to the HSR thresholds, the parties must file an HSR Form if the transaction satisfies one of two tests:

1. The total value of the proposed transaction exceeds \$359.9 million; or
2. The total value of the proposed transaction exceeds \$90 million, one party has at least \$18 million in total assets or annual sales, and the other party has at least \$180 million in total assets or annual sales.

If the transaction is reportable, the transaction cannot close until the HSR Form is filed and a designated period of time has elapsed (typically 30 days, absent a request for early termination). There are also limited exemptions from filing.

Although transactions that fall below the \$90 million threshold do not require filing an HSR Form, that does not mean the transaction is exempt from competition law analysis. Such transactions can be challenged by relevant regulators before or after the transaction closes, and the parties to such transaction should always be mindful of the impact such transaction will have on competition within the relevant market.

The FTC also separately announced that the maximum civil penalty for violations of the HSR Act will increase from \$41,484 to \$42,530 per day.

The filing fees for the HSR Form will be as follows:

Size of Transaction	Filing Fee
\$90 million to \$180 million	\$45,000
\$180 million to \$899.8 million	\$125,000
\$899.8 million or more	\$280,000

The Federal Register notice concerning the HSR thresholds can be accessed [here](#).

Interlocking Directorates

The FTC also revised the thresholds relating to the application of Section 8 of the Clayton Act, which prohibits a person from serving as a director or officer of competing corporations if certain thresholds are met and an exemption does not apply. Effective March 4, 2019, competing corporations are covered by Section 8 if each corporation's capital, surplus, and undivided profits exceed in the aggregate \$36,564,000, unless one or more of the following exemptions apply: (a) one of the corporations has competitive sales of less than \$3,656,400; (b) the competitive sales of either corporation are less than 2% of that corporation's total sales; or (c) the competitive sales of each corporation are less than 4% of that corporation's total sales.

The Federal Register notice concerning Section 8 of the Clayton Act can be accessed [here](#).

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