

ANTITRUST & TRADE REGULATION

2017 HSR THRESHOLDS ANNOUNCED BY FEDERAL TRADE COMMISSION

By: [Jack Sidorov, Esq.](#), [Jeffrey Blumenfeld, Esq.](#), and [Jeffrey M. Shapiro, Esq.](#)

The Federal Trade Commission has announced new premerger notification thresholds that are scheduled to take effect February 27, 2017, 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 gross national product. The newly announced adjustments will increase the HSR Act thresholds by approximately 3.3%.

Adjustments to Size-of-Transaction Thresholds

Transactions that are never reportable. The new minimum size-of-transaction threshold will be \$80.8 million, an increase of \$2.6 million from the current \$78.2 million threshold. Thus, a transaction that results in holdings of \$80.8 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 \$323 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 \$80.8 million but no greater than \$323 million), whether HSR applies

depends on whether both parties meet the size-of-person thresholds.

Adjustments to Size-of-Person Thresholds

The adjusted size-of-person thresholds are \$16.2 million and \$161.5 million, meaning that acquisitions resulting in holdings greater than \$80.8 million but no greater than \$323 million will not require HSR notification unless one person has total assets or annual net sales of \$16.2 million or more and the other person of \$161.5 million or more. (Note that if the acquired person is not engaged in manufacturing, the threshold for it is annual net sales of \$161.5 million or total assets of \$16.2 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 will be adjusted upward – 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).

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% 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 \$80.8 million but less than \$161.5 million; the \$125,000 fee to transactions valued at \$161.5 million or greater but less than \$807.5 million; and the \$280,000 fee to transactions valued at \$807.5 million or greater.

HSR Thresholds (in millions)		
Base Threshold (HSR Act or Rules)	2016 Threshold	2017 Threshold (effective February 27, 2017)
\$10	\$15.6	\$16.2
\$50	\$78.2	\$80.8
\$100	\$156.3	\$161.5
\$110	\$171.9	\$177.7
\$200	\$312.6	\$323
\$500	\$781.5	\$807.5
\$1,000	\$1,563	\$1,615

contacts

Please contact the attorneys named below for more information on this matter.

Jeffrey Blumenfeld
202 753 3810
jblumenfeld@lowenstein.com

Marita A. Makinen
212 419 5843
mmakinen@lowenstein.com

Jeffrey M. Shapiro
973 597 2470
jshapiro@lowenstein.com

Jack Sidorov
202 753 3799
jsidorov@lowenstein.com

Steven E. Siesser
212 204 8688
ssiesser@lowenstein.com

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