

FTC ANNOUNCES ANNUAL HART-SCOTT-RODINO PREMERGER NOTIFICATION FILING THRESHOLDS INCREASE FOR 2020

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR"), as amended, requires all persons contemplating certain mergers or acquisitions that meet or exceed the jurisdictional thresholds (shown below) to file notification with the Federal Trade Commission ("FTC") and Department of Justice ("DOJ") Antitrust Division and to wait a period of time before consummating the transaction.

Each fiscal year, the jurisdictional filing thresholds are adjusted to reflect the percentage change in the gross national product. The FTC announced the new jurisdictional filing thresholds on January 28, 2020. The newly revised thresholds apply to transactions that will close on or after February 27, 2020.

FILING THRESHOLDS

Parties must analyze their transactions against the "Size of Transaction" and "Size of Person" reporting thresholds. The "Size of Transaction" test is concerned with the value (through voting securities, NCI, assets or a combination thereof being transferred) of what is being acquired, whereas the "Size of Person" test generally measures a company based on its last regularly prepared annual statement of income and expenses and its last regularly prepared balance sheet. To determine whether an HSR filing is needed, parties should analyze the transaction utilizing the following steps.

1. Will an acquiring person hold an aggregate amount of voting securities and assets less than \$94 million? If yes, then no HSR filing is needed. If no, move to Step 2.
2. Will an acquiring person hold in excess of \$94 million but not in excess of \$376 million? If yes, then move to Step 3. If no, then move to Step 4.
3. Does one person to the transaction have sales or assets of at least \$18.8 million? If yes, then an HSR filing is needed. If no, then no HSR filing is needed.
4. Will an acquiring person hold in excess of \$376 million? If yes, an HSR filing is needed.

For purposes of this analysis, the value of any assets under consideration is the fair market value of the entity's non-cash assets without regard to whether those assets are subject to a mortgage or how the assets might have depreciated for accounting purposes. The table below summarizes the 2020 reporting thresholds under the HSR Act.

	Filing Required	2019 Threshold	2020 Threshold
Size of Transaction Test	No	$X \leq \$90 \text{ million}$	$X \leq \$94 \text{ million}$
Size of Transaction Test AND Size of Person Test	Yes	\$90 million < $X \leq \$359.9$ million AND Person 1: $\geq \$18 \text{ million}$ Person 2: $\geq \$180 \text{ million}$	\$94 million < $X \leq \$376$ million AND Person 1: $\geq \$18.8 \text{ million}$ Person 2: $\geq \$188 \text{ million}$
Size of Transaction Test	Yes	$X > \$359.9 \text{ million}$	$X > \$376 \text{ million}$

FILING FEE

In connection with an HSR filing, the acquiring person must pay a filing fee at the time of filing by electronic wire transfer. The amount of the filing fee depends upon the size of the transaction as follows.

Value of Holding Securities and Assets to Be Held		Fee Amount
2019 Threshold	2020 Threshold	
\$94 million < X < \$180 million	\$94 million < X < \$188 million	\$45,000
\$180 million < X < \$899.8 million	\$188 million < X < \$940.1 million	\$125,000
X ≥ \$899.8 million	X ≥ \$940.1 million	\$280,000

PENALTY

Any person (or officer, director or partner) who fails to notify the FTC and DOJ of a reportable transaction faces a civil penalty of \$43,280 for each day on noncompliance.

If you have any questions or would like additional information about this topic, please contact one of the following members of Hall Render's Antitrust Practice Group:

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