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New Hart-Scott-Rodino “Size of Transaction” Threshold will be \$84.4 Million

By Robin Sampson

On January 29, 2018, the Federal Trade Commission published in the Federal Register notice of the new Hart-Scott-Rodino Act (HSR Act) jurisdictional thresholds, which will go into effect on February 28, 2018. Under the HSR Act, the FTC and the Antitrust Division of the Department of Justice get a “sneak peek” at some transactions (investments, mergers and other acquisitions, nonprofit restructurings and certain joint ventures) before these transactions are consummated, for the purpose of evaluating each transaction’s potential for anticompetitive harm. The HSR Act exempts broad categories of transactions, but for a deal that doesn’t fall under an exemption, the filing process can be somewhat burdensome and expensive – and there is always the possibility that the agencies could prohibit the parties from closing while the reviewing agency conducts a lengthy investigation into the possible competitive effects of the deal.

Only transactions that meet a “size of transaction” test and (usually) a “size of parties” test are subject to HSR notification requirements. (Both jurisdictional tests are indexed to inflation and adjusted annually.) For the coming year an acquisition (or sale) with a value greater than \$84.4 million will meet the “size of transaction” threshold. The “size of parties” test is met if one party (including its parent, if any, and all controlled affiliates) has assets or annual sales of at least \$16.9 million, and the other party (together with controlling and controlled affiliates) has assets or annual sales of at least \$168.8 million.

A transaction with a value greater than \$337.6 million must file HSR notification even if the “size of parties” test is not satisfied. There is some regulatory and agency advice that refines these general guidelines based on industry categories, company financial statements, deal structure and other factors. Deal teams are urged to seek HSR and antitrust advice early in the acquisition process, and to confirm any HSR notification analysis with counsel. Penalties for noncompliance can be severe – parties can be fined \$41,184 *per day* for violations of the HSR Act, including a failure to properly notify the agencies of an eligible transaction.

The new 2018 thresholds, the 2017 thresholds and baseline thresholds (initially published in 2000) are as follows:

Original Threshold	2017 Threshold	New 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
\$200 million	\$323 million	\$337.6 million
\$500 million	\$807.5 million	\$843.9 million

HSR filing fees are linked to the size of transaction, and (beginning on February 28) will be adjusted to:

- \$45,000 for a transaction valued in excess of \$84.4 million but less than or equal to \$168.8 million.
- \$125,000 for a transaction valued in excess of \$168.8 million but less than or equal to \$843.9 million.
- \$280,000 for a transaction valued in excess of \$843.9 million.

For more information, please contact the author of this client alert, Robin Sampson, or your regular Drinker Biddle contact.

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