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## *New HSR Thresholds Announced for 2018*

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It's that time of year again—the Federal Trade Commission (“FTC”) has announced its 2018 jurisdictional and filing fee thresholds under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”). These thresholds are revised each year based on the gross national product. The increased thresholds were published in the Federal Register on January 29 and will become effective 30 days later, on February 28, 2018. The new thresholds will apply to all covered transactions that will close on or after that date.

### **The Hart-Scott-Rodino Antitrust Improvements Act of 1976**

The HSR Act provides that, where certain jurisdictional thresholds are met, parties intending to merge or make acquisitions must (absent any applicable exemptions) furnish the Premerger Notification Office of the FTC and the Antitrust Division of the Department of Justice with prescribed information regarding their respective businesses and the proposed transaction, and wait a specified period of time before consummating the transaction. The statutory “waiting period” stays consummation of the transaction for a minimum of 30 days (15 days in the case of bankruptcy or cash tender offers), absent a grant of early termination.

### **Revised Thresholds**

The 2000 amendments to Section 7A of the Clayton Act mandate annual adjustments of the HSR Act thresholds for each fiscal year that are based on changes in the gross national product. The revised jurisdictional and filing fee thresholds for this year increase the dollar amount limits for the size of transaction and the size of person at which parties to a transaction are required to make an HSR filing, as well as the filing fee thresholds. Many of the other filing requirements related to dollar amounts in the HSR Act have similarly been increased to remain consistent with the revised jurisdictional and filing fee thresholds.



## New Jurisdictional Thresholds

Under The New Jurisdictional Thresholds, A Transaction Will Be Reportable If:		Old Thresholds
Size of Transaction Test	The Acquiring Person will hold, as a result of the transaction, an aggregate total amount of voting securities, assets and/or interests in noncorporate entities of the Acquired Person valued at in excess of <b>\$84.4 million</b> ; AND	\$80.8 million
Size of Person Test	The Acquiring Person or the Acquired Person has annual net sales or total assets of <b>\$168.8 million</b> or more, and the other person has annual net sales or total assets of <b>\$16.9 million</b> or more; or	\$161.5 million \$16.2 million
	Transactions that are greater than <b>\$337.6 million</b> are reportable, regardless of the size of person test above.	\$323.0 million

## New Filing Fee Thresholds

Filing Fee	The New Filing Fee Thresholds Are As Follows:	Old Thresholds
\$45,000	If the aggregate amount of voting securities, assets and/or interests in noncorporate entities to be held as a result of the transaction is greater than <b>\$84.4 million</b> but less than <b>\$168.8 million</b> .	\$80.8 million \$161.5 million
\$125,000	If the aggregate amount of voting securities, assets and/or interests in noncorporate entities to be held as a result of the transaction is equal to or greater than <b>\$168.8 million</b> but less than <b>\$843.9 million</b> .	\$161.5 million \$807.5 million
\$280,000	If the aggregate amount of voting securities, assets and/or interests in noncorporate entities to be held as a result of the transaction is equal to or greater than <b>\$843.9 million</b> .	\$807.5 million



## ***Subsequent Acquisitions of Voting Securities***

The FTC also adjusted the HSR Act thresholds for subsequent acquisitions of voting securities. The FTC treats acquisitions of voting securities on a cumulative basis. That is, prior acquisitions of voting securities of the same party are included in the valuation of future transactions between the same parties. Whether an HSR filing is required in a subsequent acquisition between the same parties depends on the cumulative value of those voting securities that the buyer will hold post-transaction, whether the parties made HSR filings in their prior transaction, and whether the parties now cross a higher HSR threshold than that of their prior filing.

Note that any prior transaction where an HSR filing was made that involved an acquisition of 50% or more of the voting securities of the target, there is no further filing obligation, period. In other situations where a prior filing was made, if a new transaction between the same parties crosses a threshold above that of the prior filing, a new filing may be required. Below are the relevant revised 2018 thresholds on this subject.

<b>As Now Revised, The New Notification Thresholds Are:</b>	<b>Old Thresholds</b>
Voting securities valued at <b>\$168.8 million</b> or more;	\$161.5 million
Voting securities valued at <b>\$843.9 million</b> or more;	\$807.5 million
Voting securities constituting 25% of the issuer's securities if valued at more than <b>\$1,687.8 million</b> ; and	\$1,615.0 million
Voting securities constituting 50% of the issuer's securities if valued at more than <b>\$84.4 million</b> .	\$80.8 million

## **Section 7(A)(g)(1) of the Clayton Act, 15 U.S.C.**

The Clayton Act provides that any person, or any officer, director, or partner thereof, who fails to comply with any provision of the HSR Act is liable for a civil penalty for each day during which such person is in violation. The maximum amount of civil penalty is \$41,484 per day.

The FTC (the agency responsible for administering the HSR Act) has often stated that it takes compliance with the HSR premerger notification requirements seriously, that it will not hesitate to seek significant civil penalties from violators, and indeed it has backed this up in recent years with enforcement actions against a variety of defendants (including both companies and individuals). It is therefore important that all parties to a merger, acquisition, or joint venture follow adequate measures to ensure compliance with the HSR Act.

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*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington, D.C. lawyers:*

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