ANNUAL HSR THRESHOLD ADJUSTMENTS ANNOUNCED BY FEDERAL TRADE COMMISSION

By Jack Sidorov, Jeffrey Blumenfeld, Jeffrey M. Shapiro, and Hilla Shimshoni

The Federal Trade Commission has announced new premerger notification thresholds that will take effect February 20, 2015, and thus apply to transactions closing on or after that date. Under 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 current HSR Act thresholds by less than 1%, the smallest percentage change in HSR thresholds since annual adjustments began in 2005.

Adjustments to Size-of-Transaction Thresholds

Transactions that are never reportable: The new minimum size-of-transaction threshold will be $76.3 million, an increase of $0.4 million from the current $75.9 million threshold. Thus, a transaction that results in holdings of $76.3 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 $305.1 million, an increase of $1.7 million from the current $303.4 million threshold, 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, holdings greater than $76.3 million but no greater than $305.1 million – whether HSR applies will depend upon whether both parties meet the size-of-person thresholds.

Adjustments to Size-of-Person Thresholds

The adjusted size-of-person thresholds are $15.3 million and $152.5 million, meaning that for acquisitions resulting in holdings greater than $76.3 million but no greater than $305.1 million, HSR notification will not be required unless one person has total assets or annual net sales of $15.3 million or more and the other person of $152.5 million or more (increases from the current size-of-person thresholds of $15.2 million and $151.7 million). (Note that if the acquired person is not engaged in manufacturing, the threshold for it is annual net sales of $152.5 million or total assets of $15.3 million.)

What Else Changes?

Several exemptions provided by the HSR Rules (16 CFR parts 801-803) that contain dollar-value limitations described by the parenthetical “(as adjusted)” will have those limitations adjusted upwards – 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, so-called 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 are similarly being adjusted upwards.

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 $76.3 million but less than $152.5 million; the $125,000 fee to transactions valued at $152.5 million or greater but less than $762.7 million; and the $280,000 fee to transactions valued at $762.7 million or greater.
## HSR Thresholds (in millions)

<table>
<thead>
<tr>
<th>Base Threshold (HSR Act or Rules)</th>
<th>2014 Threshold</th>
<th>Adjusted Threshold (Effective February 20, 2015)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$10</td>
<td>$15.2</td>
<td>$15.3</td>
</tr>
<tr>
<td>$50</td>
<td>$75.9</td>
<td>$76.3</td>
</tr>
<tr>
<td>$100</td>
<td>$151.7</td>
<td>$152.5</td>
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<tr>
<td>$110</td>
<td>$166.9</td>
<td>$167.8</td>
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<tr>
<td>$200</td>
<td>$303.4</td>
<td>$305.1</td>
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<tr>
<td>$500</td>
<td>$758.6</td>
<td>$762.7</td>
</tr>
<tr>
<td>$1,000</td>
<td>$1,517.1</td>
<td>$1,525.3</td>
</tr>
</tbody>
</table>

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