

New HSR and interlocking directorate thresholds announced for 2020

29 January 2020

On 28 January 2020 the Federal Trade Commission (FTC) [released](#) the annual jurisdictional adjustments for premerger notification filings made pursuant to Section 7A of the Clayton Act, known as the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), as well as for Section 8 of the Clayton Act. The [new filing thresholds](#) for HSR notification will become effective 27 February 2020 (30 days after publication in the *Federal Register*), while the [revisions](#) to Section 8 became effective immediately upon publication in the *Federal Register*.

Civil penalties for violations of the HSR Act, which are assessed per day for each violation, increased to US\$43,280 effective 14 January 2020.

HSR notification thresholds

Under the HSR Act, certain acquisitions of assets, voting securities, or interests in noncorporate entities (such as partnerships or limited liability companies) are subject to preclosing filing (with the U.S. antitrust agencies) and waiting period requirements if the applicable jurisdictional thresholds are satisfied and no exemption applies.

Each year the FTC adjusts the HSR jurisdictional threshold tests based on changes to the U.S. gross national product. The threshold changes do not affect the amount of the [applicable HSR filing fees](#) to be paid, but do affect the threshold levels applicable to each of the filing fee levels.

The principal changes to the HSR jurisdictional thresholds will be as follows:

	Current threshold	New threshold effective 30 days after <i>Federal Register</i> publication
Size-of-transaction threshold test	Notification may be required if acquiring person will acquire and hold certain assets, voting securities, or interests in noncorporate entities valued at more than US\$90 million.	US\$94 million
Size-of-	Generally, one "person" to the transaction	At least US\$188 million and

person threshold test	must have at least US\$180 million in total assets or annual net sales, and the other must have at least US\$18 million in total assets or annual net sales.	US\$18.8 million in total assets or annual net sales.
	Transactions valued at more than US\$359.9 million are not subject to the size-of-person threshold test and are therefore reportable unless exempt.	US\$376 million
Filing fee threshold levels	HSR filing fee of US\$45,000 for transactions where the acquiring person will hold an aggregate total amount of assets, voting securities, or controlling noncorporate interests valued at more than US\$90 million but less than US\$180 million.	More than US\$94 million but less than US\$188 million. HSR filing fees remain unchanged.
	HSR filing fee of US\$125,000 for transactions where the acquiring person will hold an aggregate total amount of assets, voting securities, or controlling noncorporate interests valued at US\$180 million or more but less than US\$899.8 million.	US\$188 million or more but less than US\$940.1 million. HSR filing fee remains unchanged.
	HSR filing fee of US\$280,000 for transactions where the acquiring person will hold an aggregate total amount of assets, voting securities, or controlling noncorporate interests valued at US\$899.8 million or more.	US\$940.1 million or more. HSR filing fee remains unchanged.
Notification thresholds	When completing an HSR filing, the acquiring person in a voting securities acquisition must indicate which notification threshold it will cross – US\$90 million, US\$180 million, US\$899.8 million, 25 percent (if the value of the voting securities to be held is greater than US\$1,799.5 million), or 50 percent. These notification thresholds are also relevant to a certain HSR exemption.	The new notification thresholds are US\$94 million, US\$188 million, US\$940.1 million, 25 percent (if the value of the voting securities to be held is greater than US\$1,880.2 million), or 50 percent.

Interlocking directorates threshold

Section 8 of the Clayton Act prohibits a person from serving as a director or officer of two competing corporations if certain thresholds are satisfied and no exemption applies. The FTC is required to adjust annually certain thresholds related to Section 8 based on changes to the gross national product.

Under the [new thresholds](#), which became effective 21 January 2020 upon publication in the *Federal Register*, a person may not serve as a director or officer of competing corporations if each corporation has capital, surplus, and undivided profits aggregating more than US\$38,204,000, unless one of the corporations has competitive sales of less than US\$3,820,400. Previously, a person was prohibited from serving as a director or officer of competing corporations if each corporation had capital, surplus, and undivided profits aggregating more than US\$36,564,000 unless one of the corporations had competitive sales of less than US\$3,656,400.

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