

Clients & Friends Memo

FTC Announces 2021 Thresholds for Merger Control Filings under HSR Act and Interlocking Directorates under the Clayton Act

February 4, 2021

For the first time since 2010, the Federal Trade Commission (“FTC”) has decreased the dollar jurisdictional thresholds necessary to trigger the reporting requirements in the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (“HSR Act”); the revised thresholds were [published](#) in the Federal Register on February 2, 2021, and will become effective on March 4, 2021. Earlier, the FTC also [decreased](#) the thresholds for interlocking directorates under Section 8 of the Clayton Act, effective as of January 21, 2021. On the other hand, the maximum civil penalty dollar amounts for HSR violations were [increased](#), effective January 13, 2021.

Revised HSR Thresholds

Under the HSR Act, parties involved in proposed mergers, acquisitions of voting securities, unincorporated interests or assets, or other business combinations (e.g., joint ventures, exclusive license deals) that meet certain thresholds must report the contemplated transactions to the FTC and the Antitrust Division of the U.S. Department of Justice (“DOJ”) unless an exemption applies. The parties to a proposed transaction that requires notification under the HSR Act must observe a statutorily prescribed waiting period (generally 30 days) before closing. Under the revised thresholds, transactions valued at **\$92 million** or less are not reportable under the HSR Act.

A transaction closing on or after the date the revised thresholds become effective may be reportable if it meets the following revised criteria:

Size-of-Transaction Test	<p>The acquiring person will hold, as a result of the transaction, an aggregate total amount of voting securities, unincorporated interests, or assets of the acquired person valued in excess of \$368 million;</p> <p><i>or</i></p> <p>The acquiring person will hold, as a result of the transaction, an aggregate total amount of voting securities, unincorporated interests, or assets of the acquired person valued in excess of \$92 million but not more than \$368 million, and the Size-of-Person thresholds below are met.</p>
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Size-of-Person Test	One party (including the party's ultimate parent entity and its controlled subsidiaries) has at least \$184 million in total assets or annual sales, and the other has at least \$18.4 million in total assets or annual sales. If the acquired party is not "engaged in manufacturing," and is not controlled by an entity that is, the test applied to the acquired side is annual sales of \$184 million or total assets of \$18.4 million.
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The full list of the revised thresholds is as follows:

Original Threshold	2020 Threshold	2021 Revised Threshold (Effective March 4, 2021)
\$10 million	\$18.8 million	\$18.4 million
\$50 million	\$94 million	\$92 million
\$100 million	\$188 million	\$184 million
\$110 million	\$206.8 million	\$202.4 million
\$200 million	\$376 million	\$368 million
\$500 million	\$940.1 million	\$919.9 million
\$1 billion	\$1,880.2 million	\$1,839.8 million

The filing fees for reportable transactions have not changed, but the transaction value ranges to which they apply have been adjusted as follows:

Filing Fee	Revised Size-of-Transaction Thresholds
\$45,000	For transactions valued in excess of \$92 million but less than \$184 million
\$125,000	For transactions valued at \$184 million or greater but less than \$919.9 million
\$280,000	For transactions valued at \$919.9 million or more

Note that the HSR dollar thresholds are only part of the analysis to determine whether a particular transaction must be reported to the FTC and DOJ. Failure to notify the FTC and DOJ under the HSR Act remains subject to a statutory penalty of up to **\$43,792** per day of noncompliance (up from \$43,280 per day).

