

# FTC ANNOUNCES INCREASED HSR AND INTERLOCKING DIRECTORATE THRESHOLDS

*Hodgson Russ Antitrust, Trade Regulation & Anticorruption Alert*  
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## HSR Act Thresholds

The Federal Trade Commission ("FTC") recently announced the revised transaction thresholds that trigger the requirement to file a premerger notification and report form under the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act"). The FTC revises the thresholds annually based on changes in the gross national product. For only the second time since the thresholds began annual adjustments in 2000, the thresholds have *declined* for 2021. The new thresholds will be published this week in the Federal Register, and will be effective for all transactions closing on or after March 4, 2021.

With these recent adjustments to the HSR thresholds, the parties to a transaction must file an HSR notification if a deal meets one of two tests:

1. The total value of a proposed transaction exceeds **\$368 million** (lowered from \$376 million); or
2. The total value of a proposed transaction exceeds **\$92 million** (lowered from \$94 million) and one party has at least **\$18.4 million** in total assets or annual sales (lowered from \$18.8 million) and the other party has at least **\$184 million** in total assets or annual sales (lowered from \$188 million).

The HSR Act requires parties engaged in certain transactions (including certain mergers, acquisitions, asset sales, joint ventures, and exclusive license deals) to file a notification and report form to both the FTC and Department of Justice, Antitrust Division ("DOJ") prior to closing. Reportable transactions cannot be consummated until after a designated period of time (usually 30 days). Although there are certain exemptions to the HSR filing requirements, the \$92 million threshold is a key threshold to keep in mind. Any transaction that falls below that threshold is exempt from the filing requirements. However, transactions falling below the HSR Act threshold are routinely challenged by the antitrust authorities both before and after closing; parties should always consider the competitive effect of a proposed transaction, regardless of whether it is reportable.

The filing fees under the HSR Act remain the same, but with the following adjusted transaction value thresholds:

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Value of Transaction	Filing Fee
More than \$92 million, but less than \$184 million	\$45,000
\$184 million or greater, but less than \$919.9 million	\$125,000
\$919.9 million or greater	\$280,000

**Interlocking Directorate Thresholds**

The FTC also announced revised thresholds for the prohibition on interlocking directorates under Section 8 of the Clayton Antitrust Act of 1914 (the “Clayton Act”). Under the revised thresholds, which became effective on January 21, 2021, a single person cannot serve as an officer or director of two competing corporations if each corporation has capital, surplus, and undivided profits in excess of \$37,382,000 (lowered from \$38,204,000). This prohibition does not apply if the competitive sales of either corporation is less than (a) \$3,738,200 (lowered from \$3,820,400), or (b) 2% of such corporation’s total sales, or the competitive sales of each corporation are under 4% of each corporation’s total sales. The terms “competitive sales” and “total sales” have specific meanings pursuant to the Clayton Act.

**Civil Penalties**

In a separate announcement, the maximum civil penalty amount for violations of the HSR Act will increase from \$43,280 to \$43,792 per day, effective upon publication in the Federal Register. The new penalty levels apply to penalties assessed after January 13, 2021, regardless of whether the associated violation occurred in advance of such date.

If you have any questions relating to the HSR Act, the Clayton Act, or other antitrust issues, please contact [Valerie Stevens](#) (646.218.7614) or [Emily Florczak](#) (716.848.1714).

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