

FTC ANNOUNCES INCREASED HSR AND INTERLOCKING DIRECTORATE THRESHOLDS – 2022

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

On January 21, 2022, the Federal Trade Commission (“FTC”) announced updated 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. Contrary to the threshold decline last year, the thresholds have increased for 2022. The new thresholds will be published in the Federal Register, and will be effective for all transactions closing on or after February 23, 2022.

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

1. The total value of a proposed transaction exceeds **\$403.9 million** (increased from \$368 million), regardless of the size of the parties; or
2. The total value of a proposed transaction exceeds **\$101 million** (increased from \$92 million) and one party has at least **\$20.2 million** in total assets or annual sales (increased from \$18.4 million) and the other party has at least **\$202 million** in total assets or annual sales (increased from \$184 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 with 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 \$101 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.

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

- A **\$45,000 filing fee** for transactions valued above **\$101 million** but less than **\$202 million**;
- A **\$125,000 filing fee** for transactions valued at or above **\$202 million** but less than **\$1.0098 billion**; and
- A **\$280,000 filing fee** for any transaction valued at or above **\$1.0098 billion**.

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 24, 2022, 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 \$41,034,000 (increased from \$37,382,000). This prohibition does not apply if the competitive sales of either corporation are less than (a) \$4,103,400 (increased from \$3,738,200), 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

The maximum civil penalty amount for violations of the HSR Act will increase from \$43,792 to \$46,517 per day, effective upon publication in the Federal Register. The new penalty levels apply to penalties effective upon publication in the Federal Register and will apply to penalties assessed after the effective date of the adjustment, including penalties whose violation predated the effective 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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