

February 16, 2021

**HSR Update: Annual Jurisdictional Thresholds Revisions Effective March 4, 2021;
Temporary Suspension of Early Terminations**

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Decrease in HSR Thresholds and Early Termination Suspension. The Federal Trade Commission (“**FTC**”) recently announced its annual adjustments to the jurisdictional thresholds for premerger notification filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“**HSR Act**”). This year’s adjustment marks the first time since 2010 that the filing thresholds have decreased. The new thresholds are to become effective March 4, 2021 (the “**Effective Date**”) and will remain in effect until the next annual adjustment, expected in the first quarter of 2022. The FTC also recently announced, jointly with the Department of Justice (“**DOJ**”), that both agencies will temporarily suspend the discretionary practice of granting early terminations of the HSR Act’s waiting period.

- **“Size of Transaction” Threshold.** Under the new thresholds, the minimum “size of transaction” requiring an HSR filing has decreased from \$94.0 million to \$92.0 million. For most purposes, a transaction will be reportable only if, as a result of such transaction, the acquiring person will hold voting securities, assets or noncorporate interests valued above \$92.0 million.
- **“Size of Person” Threshold.** For transactions valued between \$92.0 million and \$368.0 million, the “size of person” test must also be met for a premerger notification filing to be required. With the new thresholds, a transaction will generally meet the “size of person” test if one person (either acquiring or acquired) has annual net sales or total assets equal to or exceeding \$184.0 million, and the other person has annual net sales or total assets equal to or exceeding \$18.4 million. However, if the acquired person is not engaged in manufacturing, the acquired person must have total assets over \$18.4 million to meet the lower side of the threshold (annual net sales are not relevant for the acquired person to meet the lower side of the threshold, but they are relevant with respect to whether the acquired person meets the higher side of the threshold). If the transaction is valued above \$368.0 million, the “size of person” test does not need to be met for premerger notification to be required.
- **Increase in Civil Penalties for HSR Act Violations.** The FTC also increased the maximum civil penalty for violations of the HSR Act to \$43,792 per day. The higher penalty amount will apply to any civil penalties adjudicated after the Effective Date of the adjusted thresholds, including civil penalties for violations that predate the Effective Date.
- **Early Terminations Suspended.** The FTC and DOJ have temporarily suspended the discretionary practice of early terminations of the HSR Act’s 30-day waiting period (15 days for cash tender or

bankruptcy transactions). The suspension became effective February 4, 2021. Under usual circumstances, grants of early termination of the waiting period are commonplace for transactions that do not pose competitive concerns. The FTC anticipates that the suspension will be brief, citing a similar suspension of early termination grants in March 2020 following the implementation of the e-filing system. For the time being, parties planning to consummate transactions requiring HSR approval should allot the full 30 days in calculating deal timelines and closing dates.

- Decrease in Interlocking Directorates Thresholds.** The FTC also reduced the thresholds that trigger the prohibition on interlocking directorates under Section 8 of the Clayton Act (15 U.S.C. § 19(a)(5)). The new thresholds, effective as of January 21, 2021, prohibit a person from serving as a director or officer of two competing corporations where each corporation has capital, surplus and undivided profits aggregating \$37,382,000 or more, unless either corporation has competitive sales of less than \$3,738,200.
- Filing Fees.** The filing fees remain unchanged, but the FTC adjusted the fee structure to reflect the new thresholds. The filing fees and updated transaction value ranges are as follows:

Filing Fee	2020 Size of Transaction Thresholds
\$45,000	For transactions valued in excess of \$92.0 million but less than \$184.0 million
\$125,000	For transactions valued at or above \$184.0 million but less than \$919.9 million
\$280,000	For transactions valued at or above \$919.9 million

- Revised Thresholds.** The complete list of revised thresholds is as follows:

Original Threshold	2020 Threshold	2021 Thresholds
\$10 million	\$18.8 million	\$18.4 million
\$50 million	\$94.0 million	\$92.0 million
\$100 million	\$188.0 million	\$184.0 million
\$110 million	\$206.8 million	\$202.4 million
\$200 million	\$376.0 million	\$368.0 million
\$500 million	\$940.1 million	\$919.9 million
\$1 billion	\$1.880 billion	\$1.839 billion



The rules governing whether an HSR filing is required are complex, and the penalties for failing to comply are serious: as noted above, parties can face fines of up to \$43,792 per day. We would be pleased to assist with your analysis and any required filing.

If you have any questions, please contact [Jennifer Wisinski](#), [Brandon McCoy](#), [Rachael Williams](#) or [Rob Atras](#).