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Revisions to HSR Act Filing Thresholds, Civil Penalty Maximum, and Interlocking Directorate Thresholds

By Vadim Brusser, Michael Naughton and Alexis Brown-Reilly

The U.S. Federal Trade Commission (FTC) has issued the annual revisions to the jurisdictional thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act) which were published in the Federal Register on January 24, 2022. The new thresholds are scheduled to become effective February 23, 2022 and will apply to transactions consummated on or after the effective date. The HSR Act requires the FTC to revise the thresholds annually based on changes in the gross national product.

Under the revisions, the size of transaction threshold has been increased from $92 million to $101 million. Consequently, the HSR Act notification and waiting period requirements will now apply to acquisitions resulting in the acquiring person holding assets and/or voting securities of the acquired person valued over $101 million. The HSR Act requirements also will apply to purchases of partnership interests and membership interests of an LLC provided that (i) the acquiring person obtains a 50% or greater interest and (ii) the interests held by the acquiring person are valued over $101 million.

Acquisitions that do not exceed $403.9 million in value (previously $368 million) also have to meet the size of person threshold to trigger the HSR Act requirements. Under the revisions, the size of person threshold generally will be met if one of the parties has total assets or annual net sales of $202 million or more (previously $184 million) and the other party has total assets or annual net sales of $20.2 million or more (previously $18.4 million).

In addition to acquisitions of voting securities that result in the ownership of at least 50% of a corporation's shares valued at over $101 million, acquisitions of less than 50% of the voting shares require separate additional HSR notifications when certain thresholds are reached. Under the revisions, a premerger filing is now required for such acquisitions when the value of the total voting securities acquired and held reaches each of the following dollar thresholds: (a) $101 million, (b) $202 million, (c) $1.0098 billion, and (d) 25% of an issuer's outstanding voting securities if valued over $2.0196 billion.

Revisions to Maximum Civil Penalty for HSR Violations

The FTC also has revised the maximum civil penalty for HSR Act violations. Such maximum civil penalties, which became effective January 10, 2022, increased from $43,792 per day to $46,517 per day.

The FTC is required to revise the maximum civil penalty for annual inflation adjustments.

The increased maximum will apply to civil penalties assessed after the effective date, including for violations that predate the effective date, but does not change penalties already assessed.

Revisions in Thresholds for Section 8 of the Clayton Act

Finally, the FTC has revised the thresholds for interlocking directorates prohibited by Section 8 of the Clayton Act, which became effective January 24, 2022. Like the HSR Act filing thresholds, the FTC is required to revise the Section 8 thresholds annually based on changes in the GNP.

Section 8 of the Clayton Act prohibits, with certain exceptions, one person serving as a director or officer of two competing corporations if certain thresholds are met. As revised, Section 8 now covers situations where each corporation has capital, surplus, and undivided profits aggregating $41,034,000 or more, unless either corporation has competitive sales of less than $4,103,400.

Please click here for the revised transaction thresholds for premerger notification filings and here for the revised interlocking directorates thresholds.

The Revised Maximum Civil Penalty is available here.

Summary of Threshold Changes

Original Threshold	2022 Adjusted Threshold
$10 million	$20.2 million
$50 million	$101 million
$100 million	$202 million
$200 million	$403.9 million
$500 million	$1.0098 billion
$1 billion	$2.0196 billion

The HSR Act filing fee thresholds also have been revised as shown in the following chart.

Transaction Valued at:	HSR Act Filing Fee
More than **$101** million but less than **$202** million	$45,000
$202 million or more but less than **$1.0098** billion	$125,000
$1.0098 billion or more	$280,000

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If you have questions concerning the contents of this issue, or would like more information about Weil's Antitrust/Competition practice group, please speak to your regular contact at Weil or to one of the authors listed below:

Authors

Vadim Brusser (Washington, D.C.)	View Bio	vadim.brusser@weil.com	+1 202 682 7224
Michael Naughton (New York, NY)	View Bio	michael.naughton@weil.com	+1 212 310 8754
Alexis Brown-Reilly (Washington, D.C.)	View Bio	alexis.brown-reilly@weil.com	+1 202 682 7194

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