

February 1, 2021

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

By Vadim Brusser, Michael Naughton and Alexis Brown-Reilly

On February 1, 2021, the U.S. Federal Trade Commission (FTC) issued for publication in the Federal Register the annual revisions to the jurisdictional thresholds for the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act). The new thresholds are scheduled to become effective March 4, 2021 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 (GNP).

Although the thresholds typically increase, this year's thresholds have decreased due to reduced GNP as a result of the COVID-19 pandemic. Under the revisions, the size of transaction threshold has been decreased from \$94 million to \$92 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 \$92 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 \$92 million.

Acquisitions that do not exceed \$368 million in value (previously \$376 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 \$184 million or more (previously \$188 million) and the other party has total assets or annual net sales of \$18.4 million or more (previously \$18.8 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 \$92 million, acquisitions of less than 50% of the voting shares require separate 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) \$92 million, (b) \$184 million, (c) \$919.9 million and (d) 25% of an issuer's outstanding voting securities if valued over \$1.839 billion.

Summary of threshold changes

Original Threshold	2021 Adjusted threshold
\$10 million	\$18.4 million
\$50 million	\$92 million
\$100 million	\$184 million
\$200 million	\$368 million
\$500 million	\$919.9 million
\$1 billion	\$1,839.8 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 \$92 million but less than \$184 million	\$45,000
\$184 million or more but less than \$919.9 million	\$125,000
\$919.9 million or more	\$280,000

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:

Vadim Brusser	View Bio	vadim.brusser@weil.com	+1 202 682 7224
Michael Naughton	View Bio	michael.naughton@weil.com	+1 212 310 8754
Alexis Brown-Reilly	View Bio	alexis.brown-reilly@weil.com	+1 202 682 7194

© 2021 Weil, Gotshal & Manges LLP. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations that depend on the evaluation of precise factual circumstances. The views expressed in these articles reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list, please [click here](#). If you need to change or remove your name from our mailing list, send an email to weil.alerts@weil.com.

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 13, 2021, increased from \$43,280 per day to \$43,792 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 downward the thresholds for interlocking directorates prohibited by Section 8 of the Clayton Act, which became effective January 21, 2021. 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 \$37,382,000 or more, unless either corporation has competitive sales of less than \$3,738,200.

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](#).