

FTC Announces Annual HSR Premerger Notification Threshold

Alert

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On February 2, 2021, the Federal Trade Commission (FTC) announced the [revised thresholds](#) to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act).

HSR Act Threshold Update

The FTC must revise the HSR Act thresholds annually based on the change in the gross national product. The size-of-transaction filing threshold will decrease from the current \$94 million threshold to \$92 million. The newly-announced recent revisions mark the first decrease in thresholds since 2010. The changes will be effective for transactions closing on or after March 4, 2021.

Under the new thresholds, the parties to an acquisition or merger will, absent an applicable exemption, need to file pre-merger notifications with the Department of Justice and the FTC and observe the HSR Act's waiting period if the transaction will result in either of the following:

- The acquiring person will hold more than \$92 million (down from \$94 million) worth of voting securities and assets of the acquired person and the parties meet the "size-of-person" requirements (set forth below).
- Regardless of the size of the parties, the acquiring person will hold more than \$368 million (down from \$376 million) worth of voting securities and assets of the acquired person.

Meeting any one of the following subtests satisfies the "size-of-person" test:

- A person with \$184 million (down from \$188 million) or more of total assets (on its most recent regularly prepared balance sheet) or annual net sales (from its most recently completed fiscal year) proposes to acquire voting securities or assets of a person with \$18.4 million (down from \$18.8 million) or more of

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annual net sales or total assets.

- A person with \$18.4 million or more of total assets or annual net sales proposes to acquire voting securities or assets of a person with \$184 million or more of annual net sales or total assets.

For the purpose of applying the thresholds, the term “person” means the ultimate parent entity of the party engaged in the transaction. Certain exemptions may apply, depending on the nature of the transaction and the location and nature of the assets and entities involved. As a result, additional analysis is often required before making a final determination regarding the need for a filing.

The filing fees for reportable transactions will be as follows:

- \$45,000 for transactions of \$92 million or more but below \$184 million
- \$125,000 for transactions of \$184 million or more but below \$919.9 million
- \$280,000 for transactions of \$919.9 million or more

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