

FTC's 2021 Adjustments to HSR Filing Thresholds

Article By:

Bryan K. Prosek

John R. Chadd

The Federal Trade Commission (“FTC”) previously announced its annual adjustment for notification thresholds regarding proposed mergers and acquisitions under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”), and the adjustments went into effect on March 4, 2021.

These threshold adjustments are based on the annual change in the U.S. gross national product. Due to contraction of the U.S. economy in 2020 and the related drop in gross national product, the HSR Act thresholds have decreased.

Summary of Adjustments

An HSR Filing May Be Necessary If:

- As a result of the transaction, the acquirer will hold voting securities, assets, or non-corporate interests of the acquired that are valued in the aggregate at more than \$92 million but not more than \$368 million, and the “size-of-person” thresholds are met. To meet the “size-of-person” test, one party must have annual net sales or total assets of at least \$184 million and the other party must have annual net sales or total assets of at least \$18.4 million.
- Or, as a result of the transaction, the acquirer will hold voting securities, assets, or non-corporate interests of the acquired that are valued in the aggregate at greater than \$368 million (the size-of-person test is not applied), unless another exemption applies.

The FTC also reduced the thresholds under Section 8 of the Clayton Act that trigger the prohibition on “interlocking directorates” - where one person serves as a director or officer of two competing corporations (subject to certain exceptions). Now, the prohibition may apply when (1) each corporation has capital, surplus, and undivided profits aggregating more than \$37,382,000, and (2) each corporation’s competitive sales are at least \$3,738,200.

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